EXAMINING THE EFFECTIVENESS OF THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT OF 2018 IN PROTECTING ELECTRONIC CONSUMERS IN NIGERIA.

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The thesis is submitted in partial fulfilment of the requirements for the award of the degree of Doctor of Philosophy of the University of Portsmouth

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DECLARATION

Whilst registered as a candidate for the above degree, I have not been registered for any other research award. The results and conclusions embodied in this thesis are the work of the named candidate and have not been submitted for any other academic award.

DEDICATION.

This work is dedicated to my younger sister, Ifedamola Adekeye (RIP), who passed away recently. Ifedamola, we started this PhD journey together. I am devastated that you left me just as I was about to cross the finish line. However, I know you are watching and proud of me. I love you. Continue to rest in peace.

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'If I have seen further, it is by standing on the shoulders of giants.'

- Sir Isaac Newton

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ABSTRACT

Despite the immense growth experienced by global B2C e-commerce since the CoviD-19 pandemic era, Nigeria, the largest economy in Africa, has struggled to grow its business-to-consumer (B2C) e-commerce market. Statistics obtained in 2022 reveal a 13% decrease in e-commerce retail spending compared to the previous year, 2021. This is concerning given that, compared to 2021, there is a significant increase in the total consumer retail spending in the country (see chapter 1.1 for more details). This decline highlights a critical observation - while Nigerian consumers continue to actively purchase in the retail market, they increasingly avoid the digital retail market. This is surprising given the well-known advantages of the digital market as a medium of purchasing (see chapter 1.1) and the global trend towards the digital market. Available research points to the inadequate level of protection offered to Nigerian electronic consumers (e-consumers) as one of the key reasons for the continuous year-on-year decline of the Nigerian B2C digital market.

This inadequate level of protection is one of the issues sought to be addressed with the enactment of the first comprehensive consumer protection law in the country – the Federal Competition and Consumer Protection Act of 2018 (FCCPA 2018). This Act is the primary focus of this thesis. Its provisions will be extensively analysed to determine their effectiveness for e-consumer protection in the country. With the little research on the Act focusing on traditional consumers, this thesis fills existing research gaps by being the first research to carry out extensive analyses of the Act within the context of e-consumer protection.

This thesis' analysis of the Act will focus on the four pillars of consumer protection contained in the Act, namely - (i) information regulations, (ii) the implied terms rules, (iii) unfair terms rules and (iv) the right of cancellation. The Act's provisions on these mechanisms will be examined to understand the level of protection they offer, identify gaps (if any) and make recommendations on how any identified gap can be corrected so that the Act can achieve efficacy. In making its recommendations, this thesis will learn from consumer protection frameworks of selected advanced jurisdictions and international organisations, namely - the United Kingdom, South Africa, the European Union, the United Nations and the Organisation for Economic Co-operation and Development.

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TABLE OF CASES.

Nigerian Cases.

- Brandscapital Ltd V. Chief Adebola Disu-Ige & Ors (2018) LPELR-44812.
- British Airways v. Atoyebi (2014) LPELR-23120 (SC).
- British & Overseas Credit Ltd v. Animashaun (1961) 1 All NLR 343.
- Bronik Motors Ltd & Anor v. Wema Bank Ltd. (1983) JELR 46432 (SC).
- Chief S. O. Agbareh & Anor Vs DR. Anthony Mimra & Ors (2008) LPELR-235(SC).
- Chike Atu v. Face to Face Million Dollar Fixed Odd Pools Ltd (Unreported) High Court of the East Central State, Onitsha Judicial Division Oputa J. Suit No. 0/161/72.
- D.I.C Industries Limited v Jimfat Nigeria Limited (1975) CCHCJ 175.
- Daniel v. FRN (2013) LPELR-22148, 18.
- Dantata v. Mohammed & Anor (2011) LPELR-9117(CA).
- Delmas & Ors v. Sunny Ositez International Ltd (2019) LPELR-47387(SC).
- DHL International Nigeria Limited v Udechukwu Chidi (1994) 2 NWLR (Pt. 329) 720.
- Eastchase Aluminium Products Ltd v. Ugwu & Anor (2016) LPELR-40936 (CA).
- Ebe v. Cop (2008) LPELR-984(SC).
- Edeminam v. Ukime (2007) ALL FWLR (Pt. 396) 763 at 768 paras. G - H (CA).
- Eholor v. Osayande (1992) LPELR-8053(SC)
- Ejigini v. Ezenwa & Ors (2003) LPELR-10329(CA).
- Eliochin (Nigeria) Ltd. v. Mbadiwe [1986] 1 NWLR 47.
- Ezex Courier Services Ltd v Ugwu & Anor (2013) Suit No: CA/L/837/2013.
- Faloughi v. Faloughi (1995)2 NWLR (Pt. 384) 434.
- First African Trust Bank Ltd & Anor v. Ezegbu & Ors (1993) LPELR-1279(SC).
- General Muhammadu Buhari v Alhaji Mohammed Dikko Yusuf (2003) LCN/3084(SC).
- Gold Link Insurance Company Ltd VS Petroleum (Special) Trust Fund (2008) LPELR-4211 CA.
- Ibidapo v Lufthansa Airlines 3 (1997) 4 NWLR 124.
- International Messenger (Nig.) Ltd v Pegofor Industries Ltd (2005) 5 SCNJ 120.
- Intl Textile Ind. (Nig) Ltd v. Aderemi & Ors (1999) LPELR-1527(SC).
- Iwuoha v Nigerian Railway Corporation [1997] LPELR-1570 (SC).
- Jeric Nigeria Ltd. V. Union Bank Nig Plc (2000) 15 NWLR (Pt. 691) 477.
- JFS Investment Ltd v. Brawal Line Ltd & Ors (2010) LPELR-1610(SC).
- Khalil and Dibbo v. Mastrionikolis (1948) 12 WACA 462.

- Kopek Construction Ltd. VS. Ekisola (2010) 3 NWLR Pt 1182 p.61.
- Kuforiji & Anor V. V.Y.B. (Nig) Ltd (1981) LPELR-1716(SC).
- Lawal v. Ollivant (1972) 3 SC 124.
- Lignes Aeriennes Congolaises v. Air Atlantic Nigeria Ltd (2005) LPELR 5808 (CA).
- Malik v. Kaduna Furniture & Carpets Co. Ltd (2016) LPELR-41308(CA).
- Mekwunye v Emirates Airlines (2019) 9 NWLR (Pt 1677) 191 (SC).
- Military Gov. of Ondo State v. Adewunmi (1988) 3 NWLR. (Pt.82) 280.
- Mohammed v. Mohammed & Anor (2011) LPELR-3729(CA).
- MTN Communication Ltd v. Amadi (2012) LPELR-21276(CA).
- Mustapha & Co vs NCEI (1955) 21 NLR, 69.
- Nassar and Sons (Nig.) Ltd v. L.E.D.B. (1959) 4 FSC 242.
- NBC Ltd v Constance Obi Ngonadi (1985) LPELR-2017(SC).
- Nze Bernard Chigbu v Tonimas Nig. Ltd (2006) NWLR (Pt.984) 189. 2.
- Nwobike v. FRN (2021) LPELR-56670(SC).
- Odeniyi v Zard & Co (1972) 2 UILR 34.
- Ogwu v Leventis Motors Limited (1962) NNLR 115.
- Ogbuanyinya v. Okuda (1979) 6-9 SC. 32.
- Oloyo vs. Alegbe (1983) 2 SCNLR 35/57.
- Onyido v. Ajemba (1991) 4 NWLR (Pt. 184) 203 at p.228.
- OSIEC & Anor v. AC & ORS (2010) LPELR-2818(SC).
- Osolu v Osolu (2003) JELR 44772 (SC).
- Otegbeye v. Little (1906)1 NLR 70.
- Peenok Investment Ltd Vs Hotel Presidential Ltd (2011) ALL FWLR (Pt.571) 1428.
- Plastic Manufacturing Company Limited v Toki of Nigeria Limited (1976) 12 CCHCJ 2701.
- Rockonoh Property Co. Ltd VS. Nigerian Telecommunications Plc (2001) 14 NWLR (PT. 733) 468 at 493 Para F-G.
- S & F Panoramic Tourist Co. Ltd & Ors v. Ukhuegbe & Ors (2020) LPELR-52101(CA).
- S.P.D.C. (Nig.) Ltd V. Allaputa (2005) 9 NWLR (Pt. 931) 475 at 500 Paras. C-D(CA).
- Sallau v. Minister F.C.T & Ors (2023) LPELR-60657(CA)

- Royal Exchange Assurance Nig. Ltd. V Aswani Textiles Industries Ltd (1991) 2 NWLR (Pt. 176) 639.
- Sonner (Nig.) Ltd v. Partnereedn M.S. Nordwind (1987) LPELR 3494 (SC).
- Sono Masazo. 'The Effect of Price Changes on the Demand and Supply of Separable Goods' (1961) 2(3) International Economic Review, p.239-271.
- Statoil (NIG) Ltd & Anor v. FIRS & Anor (2014) LPELR-23144(CA).
- Sunshine Oil & Chemical Dev. Co. Ltd v. AMCON & Anor (2017) LPELR-51653(CA).
- Swiss-Nigerian industries Ltd v Oanilo Boqo S.C.14/70 (unreported) decided on 3/7/70.
- T.E Demuren v Atlas Nigeria Limited (1976)12 CCHJ 2709.
- Tanko VS. Mai-Waka (2010) 1 NWLR Pt 1176 p.468.
- Tonique Oil Services Ltd v Virgin Forest Energy Ltd (2021)LCN/15641(CA).
- Trade Bank Plc v. LILGC & Ors (2002) LPELR-6175(CA).
- Udogwu v Oki (1990) 5 NWLR (Pt.153) 721, p.731.
- Uzowulu & Ors v. Akpor & Ors (2014) LPELR-22190(CA).
- Yaro v. Manu & Anor (2014) LPELR-24181(CA).

International Cases

- Arcos Ltd v EA Ronaasen & Son [1933] 2 WLUK 3.
- Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt [2014] OJ C 194/5, C-26/13.
- Ashington Piggeries Ltd v Christopher Hill Ltd [1972] A.C. 441.
- Aziz v Caixa d'Estalvis de Catalunya [2001] UKHL 52.
- Balmoral Group Ltd v Borealis [UK] Ltd. & Ors [2006] 2 Lloyd's Rep. 629 at 140.
- Banca B. SA v A.A.A [2020] EUECJ C-269/19: 954.
- Banco Espanol de Credito SA v Calderon Camino (C-618/10) [2012] 6 WLUK 273.
- Channell J in Varley v Whipp [1900] 2 WLUK 27.
- Clegg v Anderson (t/a Nordic Marine) [2003] 1 All E.R. (Comm) 721 at [72].
- Corbett Construction Co Ltd v Simplot Chemical Co Ltd [1971] 2 W.W.R. 332.
- Crowther v Shannon Motor Co [1975] 1 WLR 30, 33.
- Director General of Fair Trading v First National Bank plc [2001] UKHL 52.
- Drummond & Sons v Van Ingen & Co [1887] 4 WLUK 1.

- Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd [1996] 4 All ER 769 at 774.
- Suisse Atlantique Societe d'Armament SA v NV Rotterdamsche Kolen Centrale [1967] 1 AC 361.
- The Moorcock (1889) LR 14 PD 64 (CA).
- The Port Caledonia and The Anna [1903] P. 184, 190.
- Travers (Joseph) v Longel [1947-51] C.L.Y. 9252.
- Vallejo v Wheeler (1779) 1 Cowp 143
- Vestergaard Frandsen A/S v Bestnet Europe Ltd [2013] UKSC 31.
- XZ v Ibercaja Banco SA [2020] EUECJ C-452/18

TABLE OF LEGISLATION.

Nigeria

- Advance Fee Fraud and Other Fraud Related Offences Act of 1995.
- Civil Aviation Act, 2022.
- Cybercrimes (Prohibition and Prevention) Act, 2015.
- The Economic and Financial Crimes Commission (EFCC) Act of 2004 (as amended).
- Electric Power Sector Reform Act 2005.
- Food and Drugs Act 1976.
- Marketing of Breast Milk Substitute Decree, No. 4, 1990.
- Miscellaneous Offences Act 1985.
- National Agency for Food and Drugs Administration and Control (NAFDAC) Decree No. 15 of 1993.
- National Environmental Standards and Regulations Enforcement Agency Act 2007-2018.
- National Film and Video Censors Act 1993.
- Nigeria Civil Aviation Regulations 2023
- Companies and Allied Matters Act 2020.
- Constitution of the Federal Republic of Nigeria CAP C23 Laws of Federation 2004.
- Evidence Act of 2011.
- Federal Competition and Consumer Protection Act, 2018.
- Illiterates Protection Law Chapter I4, Laws of Lagos State, Nigeria, 2015.
- Public Health Ordinance 1958.
- Standards Organizations of Nigeria (SON) Decree, No. 56 of 1971
- The Colonial Laws Validity Act 1865 (28 & 29 Vict. c. 63).
- Interpretation Act of 1964 CAP I4 Laws of Federation 2004.

International

- Australian Consumer Law, 2011.
- Australian Consumer Law Information Standard 2017 (Australia).
- Commonwealth Model Law on Electronic Transactions 2017.

- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (United Kingdom).
- Consumer Protection Act 2002 (Canada).
- Consumer Protection Act 1986 (India).
- Consumer Protection Act 68 of 2018 (South Africa).
- Consumer Rights Act 2015 (United Kingdom).
- Consumer Right Directive 2011/83/EU (European Union).
- Electronic Communications and Transactions Act, 25 of 2002 (South Africa).
- Sale of Goods Act 1893.
- Unfair Terms in Consumer Contracts Directive 1993 (European Union).
- United Kingdom General Data Protection Regulation 2018 (United Kingdom)
- United Nations Guidelines for Consumer Protection 2016.

TABLE OF ABBREVIATIONS.

A

Aziz Case	Aziz v Caixa d'Estalvis de Catalunya [2001] UKHL 52.

B

BEIS	United Kingdom Department of Business, Energy and Industrial Strategy.
B2B	Business-to-Business.
B2C	Business-to-Consumer.

C

CCR 2013	Consumer Contract (Information, Cancellations and Additional Charges) Regulations 2013 (United Kingdom).
CJEU	The European Court of Justice.
CMA	The United Kingdom Competition and Markets Authority
CMA Unfair Terms Guidance	Competition and Markets Authority Guidance on the unfair terms provisions in the Consumer Rights Act 2015.
CMLET 2017	Commonwealth Model Law on Electronic Transactions.
CCPT	Competition and Consumer Protection Tribunal.
CRD 2011	Directive on Consumer Rights 2011 (European Union)
CRA 2015	Consumer Rights Act 2015 (United Kingdom).

D

Demuren's case	T.E Demuren v Atlas Nigeria Limited (1976)12 CCHJ 2709.

E

E-commerce	Electronic Commerce.
E-Consumer	Electronic Consumer.
E-Seller	Electronic Seller.

EC Unfair Terms Guidance	European Commission, Commission Notice Guidance on the Interpretation and Application of Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts (2019/C 323/04).
ECTA 2002	Electronic Communications and Transactions Act 25 of 2002.

F

FCCPA 2018	Federal Competition and Consumer Protection Act of 2019.
FCCPC	Federal Competition and Consumer Protection Council.
FMH	Federal Ministry of Health.

H

Hassan's case	Alhaji Auwalu Bura Hassan V. Godwin Obodoeze & Ors (2012) LCN/5254(CA) 14.

I

ICO	United Kingdom Information Commissioner's Office.

K

Kuforiji Case	Kuforiji & Anor v. V.Y.B. (Nig) Ltd (1981) LPELR-1716(SC).

L

LAI	Legal Aid Initiative.

M

MTN	Mobile Telephone Network Nigeria Limited.

O

OECD	The Organization for Economic Co-operation and Development.

P

Pia Messner Case	Pia Messner v Firma Stefan Krüger [2009] (C-489/07) ECR I-07315 Par. 19, 22–24.

R

RWE case	RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen e.V. [2013] EUECJ C-92/11.

S

SGA 1893	Sale of Goods Act 1893.
SA-CPA 2008	Consumer Protection Act 68 2008.

U

UCTD 1993	Unfair Terms Directive 1993.
UK	United Kingdom.
UK GDPR	United Kingdom General Data Protection Regulation 2018.
UNGCP 2016	United Nations Guidelines for Consumer Protection.

CHAPTER ONE.

INTRODUCTION.

1.1: Research Background.

The International Monetary Fund[1] and the World Bank[2] rank Nigeria as the 32nd economy in the world and the number one economy in Africa. The World Bank also found that Nigeria is the 23rd largest consumer market in the world, with a consumer retail spending of $304,975bn in 2022.[3] Despite the size of its economy and consumer market, it is alarming that electronic commerce (e-commerce) continues to struggle in the market, especially compared to other developing countries.[4] Of the $304,975bn reported consumer retail spent in 2022,[5] only 2.18% ($6,653.5bn) came from consumer purchases in the digital market,[6] a 13% reduction from the previous year, 2021, where consumer retail spending in the digital market was $7.6bn.[7] This is concerning because the reduction did not conform with the global trend, as global retail e-commerce revenue rose by a staggering $500billion between 2021 and 2022.[8] The above-stated data leads to one conclusion - it is obvious that Nigerian consumers are buying, they are just not buying from the digital market, and those who have previously bought from it have stopped.

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[1] International Monetary Fund, 'World Economic Outlook Database' (*IMF.org April 2023*) <https://www.imf.org/en/Publications/WEO/weo-database/2023/April> Accessed 25 July 2023.

[2] World Bank, 'GDP' <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> Accessed 25 July 2023.

[3] World Bank, Households and NPISHs Final consumption expenditure (current US$)., <https://data.worldbank.org/indicator/NE.CON.PRVT.CD?year_high_desc=true> Accessed 26 July 2023.

[4] eCommerceDB in their survey ranked Nigerian the 40th e-commerce economy in the world. See – eCommerceDB, eCommerce market in Nigeria <https://ecommercedb.com/markets/ng/all>? Accessed 25 July 2023.

[5] World Bank, Households and NPISHs Final consumption expenditure (n.3).

[6] Statista, Africa <https://www.statista.com/statistics/1120999/gdp-of-african-countries-by-country/> Accessed 20 July 2023

[7] Oxford Business Group, Booming Population and E-commerce in Nigeria Spur Innovation in Retail, < https://oxfordbusinessgroup.com/reports/nigeria/2023-report/retail/on-the-up-a-booming-population-and-the-rapid-rise-of-e-commerce-creates-opportunities-for-disruption-and-innovation-overview/ > Accessed 30 July 2023

[8] Statista, Retail E-commerce Sales Worldwide from 2014 to 2026, <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/> accessed 26 July 2023.

Empirical research found that over the past few decades, both sellers and consumers have shown preference for e-commerce over traditional commerce as a trading medium.[9] The reason behind this is not far-fetched. From the sellers' perspective, e-commerce offers considerably low running costs, improved productivity, automation of processes, broader market/consumer reach, the ability to target relevant consumers through consumer intelligence marketing tools(target ads), etc.[10] For consumers, it offers convenience, a wide range of choices, flexibility,[11] time savings advantages, twenty-four hours availability with little to no geographical or time restrictions,[12] easy price comparison advantages,[13] etc. E-commerce has also attracted the attention of governments and international organisations, who recognise its advantages and the wealth of opportunities it offers to their economies and, in the case of international organisations, the global economy.[14]

Accompanying these advantages are some unique challenges associated with purchasing through the digital market,[15] several of which can be traced to the distant nature of the market.[16] These include - the inability to physically examine the goods before contracting,

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[9] Oloveze AO., Ogbonna C., Ahaiwe E. and Ugwu, P., 'From Offline Shopping to Online Shopping in Nigeria: Evidence from African Emerging Economy' (2022) 1 Indian Institute of Management Ranchi, Journal of Management Studies, 55.

[10] For more on the advantages of e-commerce to sellers, see also Norman Silber, 'From the Jungle to The Matrix: The Future of Consumer Protection in Light of its Past' in Jane K Winn (eds), *Consumer Protection in the Age of the Information Economy* (Markets and the Law, Ashgate 2006) 24; and Jesus Ignacio Fernandez Domingo, `Some Notes about Contracting and Electronic Commerce' in Francisco Javier Orduna Moreno (*eds*), *Contracting and Electronic Commerce* (Spanish) (Tirant lo Blanch 2003).

[11] Adelola Tiwalade, Dawson Ray, and Batmaz Firat, 'Privacy and Data Protection: The Effectiveness of a Government Regulation Approach in Developing Nations, Using Nigeria as a Case,' (The 9th International Conference for Internet and Secured Transactions, London, 2014) 234–239.

[12] Ozuru H, Chikwe J, and Amue J, 'Consumer Behaviour and Online Shopping Adoption in Nigeria,' (13th Annual International Conference Casablanca, Morocco, 2012) 434–446.

[13] Chemzche Omar and Anas T, 'E-Commerce in Malaysia: Development, Implementation and Challenges,' (2014) 3(1) Irmbrjournal.com, 291–298.

[14] The European Commission in Commission, *A European Consumer Agenda Boosting condence and growth* (Communication) COM (2012) 225; Organisation for Economic Co-operation and Development (OECD), *Guidelines for Consumer Protection in the Context of Electronic Commerce 1999* (France: OECD, 2000) Accessed at <https://www.oecd.org/sti/consumer/34023811.pdf> Accessed 9 July 2023. See also United Nations, *Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996)* as adopted in 1998 (General Assembly Resolution 51/162 of 16 November 1996) <https://www.jus.uio.no/lm/un.electronic.commerce.model.law.1996/i e.html> accessed 12 July 2023.

[15] Organisation for Economic Co-operation and Development, *Recommendation of the Council on Consumer Protection in E-commerce*., <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0422> Accessed 12 June 2023

[16] ibid.

information asymmetry,[17] exposure to unconscionable practices,[18] privacy concerns[19] etc. All of which are prevalent in Nigeria. In addition to these, Nigerian electronic consumers (e-consumers) are exposed to other challenges caused by the peculiarities of the Nigerian social and legal environment such as - inadequate legal remedies, outdated and ineffective consumer protection frameworks, exposure to fraud, unfair terms, limited digital literacy, expensive information costs, infrastructure issues, etc.[20] There is a need to protect Nigerian e-consumers.

While e-commerce is becoming known in Nigeria, its growth has been inconsistent.[21] Despite being the number one economy in Africa for the last decade, Nigeria's e-commerce market continues to struggle to catch up with its counterparts in other developing countries[22] for both legal and non-legal reasons. The non-legal reasons include but are not limited to technical impediments, the prevalence of fraud, infrastructure impediments (power, energy and internet), low level of e-readiness by supporting industries, market and regulators,[23] low level of consumer education and awareness, [24] etc. The legal impediment, which is a

[17] ibid

[18] Svantesson Dan and Roger Clarke, 'A Best Practice Model for E-Consumer Protection' (2010) 26(1) Computer Law and Security Review, 31-37.

[19] Moores, Trevor, 'Do Consumers Understand the Role of Privacy Seals in E-Commerce?' (2005) 48(3) Communications of the ACM, 86-91.

[20] Ilobinso, Ihuoma 'A Critical Analysis of the Online Consumer's Right to Information in Nigeria' (2022) 4 International Review of Law and Jurisprudence, 89.

[21] Faloye Olaleye. 'The Adoption of E-commerce in Small Businesses: An Empirical Evidence from Retail Sector in Nigeria.' (2014) 8(2) Journal of Business and Retail Management Research, 14.

[22] Tom Alexander and Jasper Andreas., 'E-Commerce in Nigeria: A Qualitative Study on Challenges in the Nigerian E-Commerce Landscape and Solution Approaches' (Thesis, Jönköping University, Jönköping International Business School, 2022). See also Akintoye Ishola R., et al. 'Business Sustainability Through E-commerce: A Myth or Reality in Nigeria.' (2022) 23(2) Business: Theory and Practice, 408-416. P.409.

[23] Molla and Licker defined e-readiness as – "the assessment that an organization's business partners such as , customers and suppliers and stakeholders such as the regulators' ability and preparedness for electronic conduct of business" - Molla A. and Licker P., 'E-Commerce Adoption in Developing Countries: A Model and Instrument' (2005) 42 Information & Management, p.877-899.

[24] Lawal Mohammed, and Khadija Abdulkadir., 'An Overview of E-Commerce Implementation in Developed and Developing Country; A Case Study of United States and Nigeria' (2012) 2(5) International Journal of Modern Engineering Research, 3068-3080. p.3076. See also Ayo Charles, et al., 'Business-to-Consumer E-commerce in Nigeria: Prospects and Challenges' (2011) 5 (13) African Journal of Business Management, 5109. See also Tom Alexander and Jasper Andreas., *(n.22)* and See also Akintoye, Ishola R., *et al. (n.22)* 409.

significant contributor to the low development, is the dearth of efficient and adequate e-consumer protection frameworks.[25] The legal issues will be the focus of this thesis.

Protecting e-consumers has been highlighted as an important tool for encouraging e-commerce adoption in emerging and developing markets.[26] This is because e-commerce introduces a different way of trading where negotiations, contracting, buying, selling and related commercial activities are conducted with the click of a few buttons on electronic devices and different from the traditional market. These peculiar issues must be addressed when seeking to develop the market. This research is in no way implying that fixing e-consumer protection issues will solve all the issues encountered by e-commerce in Nigeria - it is only pointing out that it would be a good place to start as it would improve consumer trust and confidence in the digital market. Trust and confidence are key contributors to the development of any consumer market.[27] One of the ways to instil trust and build confidence is legal certainty.[28] Improving the level of protection available to consumers facilitates this legal certainty,[29] which subsequently grows their trust and confidence.[30] The consequence of which is a positive impact on the market's development, acceptance, usage and engagement. As it stands, existing research reveals that consumers' trust and confidence in the Nigerian

[25] Idem Jacob, and Olarinde Elisabeta. 'Assessing the Adequacy of the Legal Framework in Facilitating E-Commerce in Nigeria.' (International Conference on Data Analytics for Business and Industry (ICDABI). Institute of Electrical and Electronics Engineers (IEEE), 2022).

[26] United Nations Conference on Trade and Development, *E-commerce and Development Report* (UNCTAD, 2002) <https://unctad.org/system/files/official-document/ecdr2002_en.pdf> Accessed 8 July 23, p.49.

[27] Gefen D., 'E-Commerce: The Role of Familiarity and Trust' (2000) 28(6) International Journal of Management Science, 725–737.

[28] Wrbka Stefan, *European Consumer Access to Justice Revisited* (Cambridge University Press, 2014). See also Gibson L., 'Access to Justice and Consumer Redress within a Single Market' (1992) 15 Journal of Consumer Policy. 407-415.

[29] Tan YH. and Thoen W., 'Toward a generic model of trust for electronic commerce' (2000) 5(2) International Journal of Electronic Commerce, 61–74.

[30] Corbitt, Brian J., Theerasak Thanasankit, and Han Yi., 'Trust and E-Commerce: A Study of Consumer Perceptions' (2003) 2(3) Electronic Commerce Research and Applications, 203-215.

digital market is very low,[31] therefore intervention is needed.[32] The enactment of the Federal Competition and Consumer Protection Act 2018 (FCCPA 2018) in April 2019 saw the arrival of the required intervention framework.

1.1.1: The Federal Competition and Consumer Protection Act (FCCPA 2018).

The FCCPA 2018 is Nigeria's primary consumer protection framework and will be the primary focus of this thesis. The Act has been lauded as a much-needed intervention into the Nigerian market.[33] Before the Act's enactment, consumer protection in Nigeria was through a mix of contract law principles (control of exemption clauses, misrepresentation rules, implied terms, etc.), tort law (particularly negligence) and a myriad of legislations and regulations.[34] Specific industry regulators introduced frameworks to protect consumers in their respective industries. For example, the Central Bank of Nigeria Consumer Protection Framework of 2016[35] contained several mechanisms protecting consumers in the banking industry, the Nigerian Communications Act of 2003[36] and the Nigerian Communication Commission's Consumer Code of Practice Regulations,[37] introduced specific provisions protecting

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[31] Olusoji James George *et al.,* 'Risk and Trust in Online Shopping: Experience from Nigeria' (2015) 11 International Journal of African and Asian Studies 75. See also Akintola K.G.., Akinyede R.O. and Agbonifo C.O. , 'Appraising Nigeria Readiness for E-commerce Towards: Achieving Vision 20: 2020' (2011) 9 (2) International Journal of Recent Research and Applied Studies, p.1; Ayo Charles, 'The Prospects of E-Commerce Implementation in Nigeria' (2006) 11(3) Journal of Internet Banking and Commerce, 1-8; Ayo Charles, *et al.,* 'A Framework for E-commerce Implementation: Nigeria a Case Study.' (2008) 13(2) Journal of Internet Banking and Commerce, 1-12; Folorunso, O. *et al*. 'Factors Affecting the Adoption of E-commerce: A Study in Nigeria' (2006) 6 (10) Journal of Applied Sciences, 3.

[32] Olusoji James George et al., (ibid), See also Ayo, C.K. (*ibid*) 6; Nkamnebe Anayo *et al*., 'Consumer Protection in Market Transactions in Nigeria' (2009) 5(4) Innovative Marketing, 89-94, p.89.

[33] Eze Uzoamaka Gladys, and Ozioma Mary Ogbonna., 'An Evaluation of the Protection of Nigerian Consumers under the Federal Competition and Consumer Protection Commission Act.' (2021) 3 International Review of Law and Jurisprudence, 13.

[34] Monye commented that this approach to consumer policy creates a lot of uncertainties that ends up being detrimental to consumer interests - Monye F, (ibid). See also K Ajayi *et al*, '*The Forbidden Apple and its Impact on Man'* http://www.cbn.gov.ng/icps2013/papers/Legal%20And%20Regulatory%20Framework%20In%20E-payment%20Environment%20-%20Final%20Revised-%2011%2009%202013.pdf accessed 8 July 2023, p13.

[35] Central Bank of Nigeria *Consumer Protection Regulations* (2016) <https://www.cbn.gov.ng/out/2019/ccd/cbn%20consumer%20protection%20regulations.pdf > Accessed 9 July 2023

[36] Cap N97, Laws of Federation Nigeria, 2004. – Piwuna Morgan extensively discussed the protection of consumers in the telecommunication industry. See - Piwuna Morgan Goson, 'Examination of Consumer Protection under the Nigerian Communication Commission Act, 2003' (2016) 3(4) Journal of Education & Social Policy, 15.

[37] Nigeria Communication Commission, *Consumer Code of Practice Regulations* (2007) < https://ncc.gov.ng/docman-main/legal-regulatory/regulations/102-consumer-code-of-practice-regulations-1/file> Accessed 9 July 2023

consumers in the telecommunication industry. Similar provisions protecting aviation industry consumers can be seen in the Nigeria Civil Aviation Regulations.[38] This regulatory approach is common across several other specific industry frameworks across the country's legal landscape. [39]

This fragmented approach to consumer protection reduced effectiveness in consumer protection frameworks, contributed to several conflicts of law situations, and created a high level of legal uncertainties.[40] Nigerian consumers were left confused and unclear about the level and type of protection available to them under the law,[41] consequently leading to increased transaction costs for them, creating distrust and unwillingness to embrace new purchasing mediums, including e-commerce,[42] all of which affected e-commerce development in the country. When the cost of protection (cost exerted to understand these extensive regulations, resolve uncertainties, legal representation, etc.) is excessively high on consumers, the effectiveness of consumer protection frameworks becomes impeded, [43] especially given that most consumer goods are low-value goods. All of which affect the willingness to adopt.

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[38] Part 19 of the Nigeria Civil Aviation Regulations 2015. Please note that the Civil Aviation Act of 2006 has been repealed and replaced with the Civil Aviation Act of 2022, consequently, the Civil Aviation Regulations 2015 has also been replaced with the Nigeria Civil Aviation Regulations 2023.

[39] The Public Health Ordinance Cap 164 of 1958 focusing on the healthcare industry, The Standards Organizations of Nigeria (SON) Decree, No. 56 of 1971 focusing on standards of goods, The Marketing of Breast Milk Substitute Decree, No. 41 of 1990 focusing on baby food and products, The National Agency for Food and Drugs Administration and Control (NAFDAC) Decree No. 15 of 1993 focusing on food and drug related issues. The National Film and Video Censors Act No.85 of 1993 Laws of the Federation focusing on media consumption and censorship; The Electric Power Sector Reform Act 2005 with its focus on consumers of the electricity industry; The National Environmental Standards and Regulations Enforcement Agency Act 2007-2018 focused on the protection of environmental issues affecting consumers, etc.

[40] Bamodu Gbenga., 'Information Communication Technology and E-commerce: Challenges and Opportunities for the Nigeria Legal System and the Judiciary' (2004) 2 The Journal of Information, Law, and Technology, 1-24, 18.

[41] Ilobinso, (*n.20*) 89.

[42] Bamodu (*n.40*) 18.

[43] Ramsay I., 'Rationales for intervention in the Consumer Marketplace' (London, Office of Fair Trading 1984) cited in Ramsay I, *Consumer Law and Policy* (3rd Edn, Hart Publishing 2012) 47 – Ramsay examined the effects of high protection cost on the efficiency of consumer policies. As noted by Fischhcoff and Slovic, when transaction cost (which include protection costs) trumps the benefit of a given transaction, consumers exhibit behavioural bias which consequently increases their exposure to risks - Fischhoff B., Slovic P., and Lichtenstein S., 'Knowing with Certainty: The Appropriateness of Extreme Confidence' [1977] 3 Journal of Experimental Psychology: Human Perception and Performance, 552

The negative effects of using these piecemeal frameworks become worse with the emergence of e-commerce and the accompanying digital market.[44] The distance nature of this market breeds extensive risks in comparison to the traditional market, leading to several questions on the suitability of these frameworks, which apart from their fragmented nature, were largely focused on the traditional market, for the protection of e-consumers.[45] With the dire state of consumer protection during this era, enacting a comprehensive and umbrella consumer protection framework becomes imminent.[46] Therefore, passing the FCCPA 2018 into law was that necessary intervention. This thesis examines the effectiveness of the FCCPA 2018 for protecting Nigerian e-consumers. This assessment is made through the specific lenses of the primary consumer protection mechanisms in the Act - information regulations, implied terms rules, unfair terms rules and the right of cancellation.

1.2 Objectives of This Thesis.

Recognising the importance of consumer protection as a regulatory tool in an emerging market like Nigeria,[47] this thesis investigates the extent to which the provisions of the FCCPA 2018 protect consumers contracting in the Nigerian digital market, with a specific focus on the four main consumer protection mechanisms in the Act – information regulations, the implied terms rules, the unfair terms rules and the right of cancellation. The objectives of this thesis are as follows:

1. To examine the effectiveness of the FCCPA 2018 for e-consumer protection in Nigeria, focusing on the four principal pillars of consumer protection in the Act, namely (i)

[44]Ilobinso, (*n.20*) 89.

[45] Nuruddeen *et al*., 'Legal Framework for E-commerce Transactions and Consumer Protection: A Comparative Study' (2016) 2(2) Bayero Journal of Private and Commercial Law, 41-56.

[46] Pre-FCCPA, several authors highlighted the need for a robust consumer protection in Nigeria - Agbale E. A., 'Regulatory Schemes and Consumer Protection: A Critique' (1993) 7 Journal of Business Law Society p. 24; Igweike K. I., *Consumer Protection in a Depressed Economy* (12th Inaugural Lecture, University of Jos, Jos, Nigeria, 2001) 1; Kanyip B., *Consumer Protection in Nigeria: Law, Theory and Policy*. (Rekon Books Ltd., Abuja, 2005) 17 Kanyip B., 'Reflections on Consumer Protection Law in Nigeria' in Ayua, I. A., (eds) 1995 Law Justice and the Nigerian Society, 300- 301.

[47] Augustus, Nnawulezi Uche, 'Consumer Rights in a Democratic System and the Emerging Market in Nigeria.' [2018] 6 International Journal on Consumer Law and Practice, 29., p.38. See also Raymond Anjanette H., and J. Benjamin Lambert. 'Technology, E-Commerce and the Emerging Harmonization: The Growing Body of International Instruments Facilitating E-commerce and the Continuing Need to Encourage Wide Adoption.' (2014) 17 International Trade and Business Law Review, 419.

information regulations, (ii) the implied terms rules, (iii) unfair terms rules and (iv) the right of cancellation.

2. To identify the issues preventing a more widespread adoption of e-commerce among Nigerian consumers and to assess how improved regulation can facilitate better adoption.
3. To examine the extent to which the principles of freedom of contract, party autonomy, and caveat emptor have influenced the development of e-consumer protection laws in Nigeria.
4. To identify and recommend proposals for reform to remedy weaknesses in the protection offered by the FCCPA 2018 to Nigerian e-consumers.

1.3: Original Contribution and Significance of Research.

As the name implies, the FCCPA 2018 covers two areas of law – competition law and consumer protection law.[48] Simbarashe argued that while competition law and consumer protection have a common purpose, the consolidation of both by the FCCPA 2018 has detrimental effects, one of which is the neglect of consumer issues in favour of competition issues.[49] A careful look at the Act supports Simbarashe's observations. A quick scan reveals that the Act's primary focus is regulating competition issues, with consumer protection, a secondary objective. This is evidenced by the amount of time spent proffering competition law rules compared to consumer protection provisions. The Act is divided into 18 parts with 168 sections, of which only four parts and 31 sections contain consumer policies. It begs the question, is consumer law an afterthought to the Act? Especially when several modern paradigms of consumer protection appear to be missing from the Act.[50]

Existing research works on the consumer protection provision of the Act are focused on the traditional market, and none of them considered the extent of protection offered to e-

[48] The long title of the Act provides as follows – *An Act [for the] development and protection of fair, efficient and competitive markets in the Nigerian economy to facilitate access by all citizens to safe products and secure the protection of rights of all consumers in Nigeria and for related matters".* –

[49] Simbarashe Tavuyanago, 'The Interface between Competition Law and Consumer Protection Law: An Analysis of the Institutional Framework in the Nigerian Federal Competition and Consumer Protection Act of 2019' (2020) 27(3) South African Journal of International Affairs, 391-411

[50] These includes precontractual disclosure rules, specific self-enforcing remedies, etc. – For more on this, see Simbarashe, ibid.

consumers by the Act. Eze and Ogbonna examined the specific consumer rights under the FCCPA and the extent to which the regulatory oversight of the FCCPC protects consumers in Nigeria.[51] Their research expressly excluded e-consumers from the scope of their research and concluded that - the Act was not enacted to protect e-consumers.[52] Accordingly, much of the academic discussion to date has focused on the competition law aspects of the FCCPA 2018, and what consumer law discussion does exist tends to focus on consumers in general,[53] with very little discussion on how the Act affects e-consumers. Therefore, this thesis aims to address this gap by focusing on the extent to which the Act protects e-consumers in Nigeria.

This academic gap and the neglect of e-consumer protection in Nigeria is not surprising, given the absence of a comprehensive consumer protection framework before the enactment of the FCCPA 2018. The few academic research on e-consumer protection in Nigeria was done through the lenses of the old consumer protection frameworks,[54] most of which are now inapplicable given the enactment of the FCCPA 2018.[55]

Flowing from the above, it is obvious that there is a dearth of research on e-commerce protection in Nigeria, one that needs to be filled, given that e-commerce is perceived as the "future of commerce."[56] By undertaking this research, this thesis:

a. contributes to knowledge by examining the level of protection available to e-consumers in Nigeria, in the process, filling academic gaps;

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[51] Eze Uzoamaka Gladys, and Ozioma Mary Ogbonna., (n.33), 13.
[52] Ibid p.19.
[53] Nigeria: The Rights of A Consumer Under The Federal Competition And Consumer Protection Act Of Nigeria 23 December 2019 < https://www.mondaq.com/nigeria/dodd-frank-consumer-protection-act/877838/the-rights-of-a-consumer-under-the-federal-competition-and-consumer-protection-act-of-nigeria > Accessed 15 July 2023.
[54] Faloye Dotun Olaleye., 'The Adoption of E-commerce in Small Businesses: An Empirical Evidence from Retail Sector in Nigeria.' (2014) 8(2) Journal of Business and Retail Management Research, 1. See also Toyin Oguntunde and Damilola O., 'Abandonment Factors Affecting E-commerce Transactions in Nigeria.' (2012) 46(23) International Journal of Computer Applications, 41-47; Gholami Roya *et al.*, 'Factors affecting E-payment Adoption in Nigeria.' (2010) 8(4) Journal of Electronic Commerce in Organizations, 51-67; Lawal Ahmed and Richard Chukwu Ogbu. 'E-Commerce, Problems and Prospect in Nigeria." (2015) 1(3) International Journal of Scientific Engineering and Applied Science, 230-236 and Bamodu (*n.40*), 12.
[55] FCCPA 2018, s.2. See also, chapter two for the discussion on the implied repeal of received English Laws.
[56] Rayport Jeffrey F., and Bernard Jaworski. *Introduction to E-commerce* (McGraw-Hill Irwin MarketspaceU, 2004) 32

b. will set a foundation for future e-consumer protection research in Nigeria. It opens up several opportunities on which future research can be based;
c. will suggest reforms, where needed, for improving e-consumer protection in Nigeria, consequently creating an avenue for the improvement of consumer protection in Africa's leading economy;
d. sets a footpath for e-consumer protection in developing commonwealth countries;
e. by factoring in the peculiarities of the ordinary Nigerian e-consumer, this thesis will insert practicality, e-consumer behaviour and the peculiarities of the Nigerian environment into Nigeria's consumer protection academic space. No research in the country currently considers factors peculiar to Nigerian e-consumers (as identified in chapter two) vis-à-vis regulation and its effects on the effectiveness of e-consumer protection frameworks in the country.

Furthermore, this research adds key practical value to the Nigerian e-commerce scene. It:

a. will help foster the development of e-commerce in Nigeria, consequently boosting its economy.
b. will create a model for other developing countries in the region. With Nigeria being the number one economy in Africa, improving the e-commerce situation in the country will be a learning curve for other countries in the region, consequently increasing the harnessing of e-commerce advantages by Africans as a whole.

1.4: Limitations.

As the FCCPA 2018 is relatively recent, the jurisprudence and scholarship around its application are only developing. Furthermore, there is a dearth of e-consumer cases and precedents that might help with analysis in this thesis. This is because, with the access to justice issues in the country,[57] Nigerian consumers do not see the value in approaching the courts for dispute resolution, consequently affecting the development of consumer law jurisprudence in the country. These facts may constitute a setback to an in-depth legal analysis of the provisions of the FCCPA 2018 in this thesis. To close these gaps, this thesis will,

[57] As discussed in 2.2.6

where suitable, make some comparisons and learn from the legal frameworks and judicial precedents of selected jurisdictions and international organisations. These jurisdictions and international organisations are the United Kingdom, South Africa, the European Union, the United Nations, and the Commonwealth (the Selected Comparators).

The justification for using the United Kingdom and South Africa as comparators in this thesis is that just like Nigeria, they are both common law jurisdictions with similar approaches to regulating contractual relationships (i.e., less interference in contractual freedom and party autonomy) before recently introducing frameworks to protect their e-consumers, therefore they are sensible jurisdictions to compare and learn from. Furthermore, Nigerian's contract law system is based on English law and prior to the enactment of the FCCPA 2018, the United Kingdom's Sale of Goods Act 1893 regulated consumer sale of goods contracts in Nigeria. Learning how the United Kingdom, a jurisdiction with a more mature and advanced jurisprudence and is also considered one of the leading jurisdictions with empowered consumers,[58] reduced the effects of the foundational contract law principles to improve its consumer protection is a sensible approach. It is also important to mention that the FCCPA 2018 transplanted at least 90% of its consumer protection provisions from the South African Consumer Protection Act of 2008, therefore, learning from how a jurisdiction that has had the same rules for two decades will help this thesis determine and access effectiveness.

The justification for using European Union (EU) frameworks as comparators is that most of the United Kingdom consumer protection frameworks (as well as many other EU countries) were derived from EU directives.[59] Even though the United Kingdom is no longer part of the European Union, these rules continue to exist in its legal system.[60] Examining interpretations given to the European Union directives and the European Commission guidance on these directives will provide a much-needed background for several United Kingdom rules. Finally, this thesis will also learn from the United Nations and the Commonwealth's consumer

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[58] United Nations Trade and Development, World Consumer Protection Map, <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map> Accessed 9 April 2024

[59] The United Kingdom Consumer Rights Act of 2015 contained several consumer protection rules from European Union Consumer Rights Directive of 2011 and the Unfair Terms in Consumer Contracts Directive of 1993.

[60] House of Commons Library, *Brexit: UK consumer Protection Law* (2021) https://researchbriefings.files.parliament.uk/documents/CBP-9126/CBP-9126.pdf Accessed 9 April 2024

protection frameworks. This is because Nigeria is a member of these international organisations and has previously taken inspiration from frameworks issued by them.

It is important to mention that this thesis will not be undertaking a detailed comparative analysis of the e-consumer protection laws in Nigeria and the Selected Comparators. It will only be learning from frameworks in these jurisdictions, given that they arguably have a more advanced and developed e-consumer law jurisprudence. Essentially, this thesis will attempt to close the gaps created by the lack of interpretation for the FCCPA 2018 provisions by looking at similar provisions in the Selected Comparators and applying their interpretation, where reasonable. It will also address the shortcomings discovered in the FCCPA 2018 by making recommendations derived from these Selected Comparators.

1.5: Efficiency: An Intervention Tool.

As stated in objective four, this thesis will make recommendations on how to correct the weaknesses of the FCCPA 2018. Some of these reforms will be examined for 'efficiency'. Efficiency is a law and economic, scientific model used to assess legal rules' effectiveness. The efficiency of a rule is tied to the extent to which such rule facilitates social welfare,[61] which in this case will be the protection of e-consumers in Nigeria. For clarity, this model will not be used to assess the provisions of the FCCPA 2018; it will only be used when this thesis recommends reforms that do not currently exist in the FCCPA 2018. For example, this model will be used in chapter three when recommending mandatory pre-contractual information provision rules, chapter four when recommending mandatory communication channels within the context of implied term of purpose, and chapter six when recommending an extension of the FCCPA 2018 right of cancellation. Any other reforms on interpretation, augmenting and improving the effectiveness of existing FCCPA 2018 rules will not be subjected to this efficiency test.

There have been several debates on how to measure efficiency in legal rules.[62] A common consensus in these debates is cost. According to Luth, efficiency is achieved when no better

[61] Luth Hanneke. 'Behavioural Economics in Consumer Policy: The Economic Analysis of Standard Terms in Consumer Contracts Revisited.' (PhD Thesis, Erasmus University Rotterdam, 2010), 18.

[62] For more on efficiency concepts, see - Popa, Florin. "On Pareto efficiency and equitable allocations of resources." Romanian Economic Journal 10.23 (2007): 73-79. Compare Pareto's efficiency model to Kaldor Hicks

outcome or result can be achieved with the same resources.[63] Ramsay[64] offered a clearer and the most pragmatic way - *the cost-benefit analysis model* - for assessing cost when determining the efficiency of a given intervention mechanism. His model states that a legal rule is efficient when its benefits trump the associated cost. Within the context of consumer policies and intervention, Ramsay's cost-benefit model follows the following stages:

a. Identification of the source of the market failure
b. Analysis of alternative responses with keen focus on –
    i. benefit to consumer welfare;
    ii. rule formation costs;
    iii. rule enforcement costs;
    iv. compliance costs; and
    v. cost associated with unintended side effects.[65]

The attractiveness of the cost-benefit analysis is that it fits firmly with common sense intuition that the benefits should exceed cost. For example, mandating a seller to pay for returns rather than simply refunding the consumer would not be efficient if the cost of return is greater than the value of the subject matter of the contract. However, this will not be the case if the subject matter of the contract needs to be disposed of in a special way that does not cause environmental detriments (unintended side effects).

There is a need for caution. Firstly, the benefit of consumer regulation is always difficult to quantify, therefore, reasonable assumptions become indispensable. For example, it will be hard to definitively measure the actual benefit of information on consumer confidence.[66] Therefore, reasonable assumptions based on consumer behaviour regarding transaction cost vis-a-vis the value of the subject of purchase become useful in assessing benefits. Where needed, this thesis will employ reasonable assumptions when making its assessment.

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model by reading - Branch Khalkhal, and Iran Khalkhal. 'Critical Analysis of Kaldor-Hicks efficiency Criterion, with Respect to Moral Values, Social Policy Making and Incoherence.' (2012) 6(7) Advances in Environmental Biology, 2032-2038.

[63] Luth *(n.61)* 19.

[64] Ramsay (*n.43*) 43.

[65] *ibid* 45

[66] *ibid*

Secondly, compliance and enforcement costs would almost always be based on assumptions. Finally, this model should not be applied rigidly as there may be a need to sacrifice cost. [67] For example, when a given cost is needed to protect vulnerable groups, such as infants, illiterates, or consumers in a market with extreme information asymmetry (such as the digital market), etc. Using efficiency will help this thesis determine how well a recommended reform would protect e-consumers in Nigeria. It will consider the benefit of a provision versus its cost, given the value of consumer goods, and the unique, social and legal peculiarities of both the ordinary Nigerian e-consumer and the Nigerian digital market.

1.6: Chapter Structure.

This thesis will consist of six further chapters, as follows:

Chapter Two – The Nigerian E-Consumer Marketplace.

Chapter two focuses on the Nigerian scene. It introduces the thesis to Nigeria's contract law system and explains the connection between English common law and the Nigerian legal system. It also looks at the technological neutrality regulatory approach in Nigeria and analyses the effect of this approach on e-consumer protection in the country. The chapter introduces the FCCPA 2018 by giving an overview of the Act and pointing out key factors that would aid the analysis of the Act in this thesis. Finally, to facilitate a practical analysis of the FCCPA 2018, the chapter engages in a thorough exposition and analysis of the situation of ordinary Nigerian e-consumers. The exposition to be done in this chapter will play a key role throughout the thesis as it will ensure that the realities of Nigerian e-consumers are factored into the analysis to be made on the effectiveness of the FCCPA 2018. This will facilitate practical recommendations tailored to the realities of Nigerian consumers.

Chapter Three - Precontractual Information Provision and E-Consumer Protection.

Observations from chapters one and two reveals that a lot of the issues plaguing Nigerian e-consumers are linked to information failure in some way or another. Therefore, chapter three will focus on information regulation. It starts by examining its importance to e-consumer

[67] G. Howells & S. Weatherill, *Consumer Protection Law* (2nd edn, Ashgate 2005) 64.

protection. After which it will give an overview the Nigerian contract law's, including the FCCPA 2018, approach to information regulations. It will also consider whether Nigerian e-consumers are equipped to independently acquire and effectively use relevant information in the way the contract law system presumes they can. Learning from the Selected Comparators, it will make recommendations on how the FCCPA 2018's information regulations can be improved for e-consumer protection.

Chapter Four - The Statutory Implied Terms.

This chapter builds on the findings of chapter three, which concludes that while information regulations should remain the foundation of e-consumer protection, there is a need for complementary mechanisms to correct the limitations of information regulations as a consumer protection mechanism. The first of these mechanisms, namely the use of implied terms rules, will be the focus of chapter four. The use of implied terms for the control of sale of goods contracts is not new in Nigeria. However, incorporating the implied terms of description, purpose and quality into the FCCPA 2018 means that the pre-FCCPA 2018 position on these implied terms has shifted to those contained in the newly enacted Act. This necessitates the need to assess the extent to which the new provisions protect Nigerian e-consumers. This assessment will consider the Nigerian e-consumer issues and the peculiarities of the Nigerian digital, social and legal environment as identified and discussed in chapters two and three. Recommendations for reform will be made as necessary.

Chapter Five - E-Consumers and Unfair Terms.

This chapter considers the unfair terms rules, the second mechanism that could help correct some of the limitations of information as a consumer protection mechanism. Just as with the implied terms, including unfair terms rules in the FCCPA 2018 created new unfair terms rules in Nigeria. This chapter assesses these rules with the aim of determining the extent to which they protect Nigerian e-consumers. A quick scan of the Act reveals that it extended the scope of unfair terms regulation in Nigeria from only exclusion and exemption terms to all types of terms. Furthermore, it also introduced four definite tests for assessing the fairness of contract terms. This new approach to unfair terms regulations will be assessed for effectiveness. The effect of an unfair term and the remedies available to Nigerian e-consumers will also be examined, and recommendations will be made for reform, where necessary.

Chapter Six - The Right of Cancellation.

Chapter six focuses on one of the primary self-enforceable remedies in consumer law, the right of cancellation. It will start by examining the FCCPA 2018's provisions on the right of cancellation to determine the extent to which it protects Nigerian e-consumers. Recommendations will be made on how to correct identified gaps. The chapter will also examine how the right of cancellation can help correct some of the issues identified in chapters two, three, four, and five.

Chapter Seven – General Conclusion.

The final chapter of this thesis will combine the findings of all the chapters and offer comprehensive conclusions. Therefore, it will not be discussed before the discussion and arguments on which it draws have taken place.

1.7: Conclusion.

With the FCCPA 2018, Nigeria saw its first home-grown overarching consumer protection framework, an intervention long overdue. This thesis examines the efficiency of the provisions of the Act for the protection of consumers when engaging in the digital market. Examination herein will be done through the four key consumer protection mechanisms in the Act, i.e., information regulations, implied terms rules, unfair terms rules and the right of cancellation. This thesis will identify gaps, if any, consider the extent to which the identified gaps can be corrected and make recommendations for reform. This thesis contributes to existing knowledge by being the first comprehensive and detailed research into the efficiency of the Act for e-consumer protection in Nigeria.

This chapter introduces the thesis. It identified the thesis's background, aim, objectives, research questions, focus, scope, and limitations. With these foundational pieces in place, Chapter two will examine e-commerce regulation in Nigeria, the Nigerian digital market and the peculiarities of the ordinary Nigerian e-consumer. This examination will provide a foundation for e-consumer regulation and allow this thesis to assess the effectiveness of the FCCPA 2018 for e-consumer protection, with the peculiarities of Nigerian consumers and society in context.

CHAPTER TWO.

THE NIGERIAN E-CONSUMER MARKETPLACE.

2.0: Introduction.

The chapter provides insight into the Nigerian digital market and the ordinary Nigerian e-consumer. This insight will allow a practical assessment of how well the FCCPA 2018 protects Nigerian e-consumers. It gives a broad overview of the Nigerian digital market and the Nigerian legal system's approach to e-consumer protection. This discussion also gives and overview and historical background to the Federal Competition and Consumer Protection Act of 2018 (FCCPA 2018).

To allow efficient analysis of the FCCPA 2018 in this thesis, there is a need to expose this thesis to circumstances peculiar to Nigerian e-consumers. Focus will be on those social and legal factors that expose them to risk when engaging in the digital market and the resulting effects. Identifying and analysing these factors allow a practical (not an abstract) examination of the extent to which the FCCPA 2018 protects Nigerian e-consumers. It also informs this thesis on the key issues to consider when recommending reforms. This will facilitate practical recommendations tailored to address the situation of the ordinary Nigerian e-consumer.

2.1: The Nigerian E-Commerce (Digital) Marketplace.

The Organization for Economic Co-operation and Development (OECD) defined e-commerce as the sale or purchase of goods or services, conducted over computer networks by methods specifically designed to receive and place orders.[1] Despite the broad scope of e-commerce, this thesis will only consider e-commerce within the context of transactions between business sellers and consumers (B2C e-transactions).

[1] Organization for Economic Co-operation and Development (OECD) 'Understanding E-Commerce' https://www.oecd-ilibrary.org/sites/1885800a-en/index.html?itemId=/content/component/1885800a-en#:~:text=%E2%86%90%201.,mediated%20(online%20communication)%20networks. Accessed 1 September 2023

Ranked by eCommerceDB as the 40th digital market in the world,[2] the Nigerian digital market is a developing market. Majority of the transactions come from electronics and media, which constitute 41.2% of the market. Fashion ranks second with 18.9%, while furniture and appliances is at 16.4%. Food & personal care at 13.3%, and other consumer goods account for 10.2%.[3] Chapter one gave an insight into the recent state of the market, from a statistics and data point of view, it also highlighted several factors contributing to the redundant growth of the market.[4] Available data revealed that while the post-pandemic global digital market continues to rise,[5] the Nigerian digital market is going the other way, just as it did in the pre-pandemic era. As highlighted in chapter one, statistics from the World Bank revealed that retail e-commerce spending in the country has declined by double-digit percentages over the past four years.[6] Furthermore, right before the pandemic, foreign-owned e-commerce platforms exited the market at an alarming rate, headlined by the exit of Naspers, the second largest B2C platform, Konga.com.ng and another leading e-commerce platform, OLX.com.ng.[7] Naspers, in its 2018 financial statement, stated that it made a '$38 million loss on disposal' off Konga for the 2017/2018 financial year, citing an alarming and consistent decline in transactions as the key reason for the loss of profits and its consequential exit from the Nigerian digital market.[8] In addition, the reduction in e-commerce transactions has also been linked to the lack of adequate e-consumer protection.[9] With the understanding of the current

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[2] eCommerceDB, 'eCommerce market in Nigeria' <https://ecommercedb.com/markets/ng/all> accessed 15 March 2023

[3] ibid

[4] See chapter one.

[5] Ilona Dumanska, Lesya Hrytsyna, Olena Kharun, and Olha Matviiets, 'E-Commerce and M-Commerce as Global Trends of International Trade Caused by the Covid-19 Pandemic' (2021) WSEAS Transactions on Environment And Development. 1

[6] See chapter one.

[7] Independent Newspaper, 'Naspers Pulling from Nigeria' <https://independent.ng/naspers-pulling-nigeria/> accessed 20 July 2023, Techpoint Africa, 'Confirmed: OLX Shuts Down Office in Nigeria' < https://techpoint.africa/2018/02/06/naspers-shuts-down-olx-ghana-nigeria-kenya/ > Accessed 13 August 2023.

[8] Techpoint Africa, 'There's a Growing Trend of Foreign Investors Leaving the Nigerian Startup Scene' - < https://techpoint.africa/2018/04/16/foreign-investors-leaving/ > Accessed 17 February 2024.

[9] Idem Jacob, and Olarinde Elisabeta. 'Assessing the Adequacy of the Legal Framework in Facilitating E-Commerce in Nigeria.' (International Conference on Data Analytics for Business and Industry (ICDABI). Institute of Electrical and Electronics Engineers 2022). See also Nuruddeen M., Yusof Y., & Abdullah N. A., 'Electronic Commerce Transaction In Nigeria: A Critical Legal Literature Review' in A. Abdul Rahim, A. A. Rahman, Abdul Wahab N., Yaacob A., Munirah Mohamad & Husna Mohd. Arshad A (eds.), *Public Law Remedies in Government Procurement: Perspective from Malaysia* (European Proceedings of Social and Behavioural Sciences, Vol.52: 2018) p. 857-872

state of the Nigerian digital market, this thesis will examine some of the issues faced by the ordinary Nigerian e-consumer which contributes to their exit from the market.

2.2: Nigerian E-consumer Issues.

Due to several social and regulatory issues, Nigerian e-consumers are exposed to increased risk compared to consumers in the physical market and e-consumers in other developed and developing jurisdictions. These issues discourage them from adopting the digital market, consequently affecting development. This subchapter will examine the situation of the ordinary e-consumer in Nigeria. It will also set the foundation for issues to be considered throughout this thesis and provide an understanding of the realities of Nigerian society and how these realities affect Nigerian e-consumer protection. Findings in this sub-chapter will assist this thesis in making practical recommendations.

2.2.1: The Struggle to Make Informed Purchase Decisions.

While the various issues related to consumers' struggles to make informed decisions is a global problem, it is direr on the Nigerian scene. Acquiring efficient information[10] is more complicated for Nigerian e-consumers due to several factors linked to the country's social and legal environments. Nigerian e-consumers are responsible for looking out for their interests and collecting the relevant information needed to make purchase decisions.[11] Admittedly, products are accompanied by information, however, provided information are focused on putting e-sellers at a competitive advantage and not on helping e-consumers make informed decisions.[12] This leads to independent information exploration by e-consumers. While it is expected that information exploration should not be expensive and tedious because of the amount of information available online, this is not the reality of the Nigerian e-consumer, as their information exploration difficulties are not connected exclusively to availability of information. Consumer behaviour studies inform that, in reality, excessive availability of

[10] Efficiency in this context means information that leads to informed purchase decisions.

[11] Drummond & Sons v Van Ingen & Co [1887] 4 WLUK 1. See also Nicholas B 'The Pre-contractual Obligation to Disclose Information, Part 2: English Report', in Harris D and Tallon D (eds), *Contract Law Today: Anglo-French Comparisons* (OUP 1989), 170.

[12] Ilobinso, Ihuoma K. 'Paving the Path to an Enhanced Consumer Protection for the Nigerian Online Market: Theories and Concepts' (2017) 8(2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 81-91, p.89

information does not always result in informed decisions, rather, it complicates decision-making.[13] When information is not provided, e-consumers have to independently search for this information online, with the amount of information available online, they usually exhibit behavioural defects, which affect their ability to process large amounts of information to the level required for efficient use.[14] Excessive information complicates information processing, affects the quality of decisions and creates ineffective contracts.[15] Chapter 3.2.1 examined the capacity of Nigerian e-consumers to independently navigate the amount of information available online, it found that they struggle with this navigation, consequently affecting the quality of their decisions.

There is a big internet and consumer literacy issue in Nigeria,[16] a significant number of consumers in the country lack the expertise and knowledge to definitively identify missing information, and efficiently gather information relevant for informed decision-making. With this, there is always the risk of consumers missing relevant information that would have influenced their purchasing decisions.[17] Saddling Nigerian e-consumers with the responsibility of seeking information usually leads to inefficient and expensive information exploration process,[18] a process so delicate that an error at any of the exploration stages affects the quality of the decision that will be made. As will be discussed in 2.2.3, from a cost perspective, information exploration is expensive in Nigeria. Consumer behaviour studies reveal that information exploration's costs and efforts exceed the benefits of exploring, consumers exhibit negative behavioural traits such as rational apathy, rational ignorance, excessive optimism, hyperbolic discounting, etc.,[19] subsequently influencing the quality of decisions.

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[13] Howells (n.28)., p.349-370.

[14] These include but are not limited to information overload, hyperbolic discounting, excessive optimism, framing, etc.

[15] Kastle-Lamparter, (*n.45*) 385.

[16] For more on the literacy issues in Nigeria, please see chapter *2.2.2.*

[17] Lim J and Kim J, 'Impact of Consumers' Confidence in Judgements about Missing Information on Product Evaluations' (1992) 25(3) Journal of Business Research 215-229.

[18] Information exploration is the examination and processing of a large amount of information in an unstructured way to uncover initial patterns, characteristics, and points of interest. For more on information exploration, please see Dubitzky W, Kötter T, Schmidt O, and Berthold M, 'Towards Creative Information Exploration based on Koestler's Concept of Bisociation' in M Berthold (eds) *Bisociative Knowledge Discovery. Lecture Notes in Computer Science*, (v.7250 Springer, Berlin - Heidelberg: 2012). For more on this, please also see Chapter three.

[19] For more on behavioural insights into the effects of information cost on consumer decision making , see Faure G and Luth H "Behavioural economics in unfair contract terms" (2011) 34 Journal of Consumer Policy 337–358.

Uninformed purchase decisions lead to inefficient contracts,[20] hinder consumer participation,[21] increase power imbalance in the consumer marketplace,[22] reduce consumer trust in the market,[23] increase consumers' exposure to harm, interfere with contractual autonomy,[24] reduce the efficiency and certainty of consumer risk assessment, and expose consumers to unconscionable practices,[25] consequently affecting adoption and development. These negative effects led to several common law jurisdictions moving to an information-based regulatory approach for B2C e-contractual relationships,[26] where sellers are mandated to pre-contractually provide selected pieces of information to e-consumers. Chapter three will examine how this information-based regulatory approach can help Nigerian e-consumer protection.

2.2.2: Literacy - Digital Literacy and Consumer Literacy.

2.2.1 referenced literacy, and how it influences consumer decision-making. This chapter will discuss e-consumers literacy issues in Nigeria. To effectively engage an information-dependent market, a buyer must be a competent contracting party who can navigate the market (navigation heavily depends on information use and exploration) and make beneficial decisions. Literacy is important for this navigation. From a general literacy point, 62% of Nigerians are literate and can either read or write in the official English language.[27] However, the concerns here exceed the ability to read or write. The focus is on the level of literacy needed to understand the digital commercial environment. Making informed decisions in the digital market heavily depends on e-consumers' understanding of the digital, purchasing and

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For more on rational apathy and consumer behaviour, see Bergh R and Visscher L., 'The Preventive Function of Collective Actions for Damages in Consumer Law (2008) 1 Erasmus Law Review at 5.

[20] Kastle-Lamparter, (*n.45*) 402.

[21] Bainbridge, `Mandatory Disclosure: A Behavioural Analysis' (2000) University of Cincinnati Law Review. 102.

[22] Kastle-Lamparter, (*n.4*) 385.

[23] Hoffman Donna, Thomas P. Novak, and Marcos Peralta. 'Building Consumer Trust Online' (1999) 42(4) Communications of the ACM, 80-85.

[24] Howells, (*n.28*) 349-370.

[25] Bainbridge (n.98) 102.

[26] The United Kingdom, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Schedule 2. India - s.6, of the Consumer Protection Act,1986, Australia -the Australian Consumer Law Information Standard 2017. Canada - Canada - The Consumer Protection Act 2002, s.38. etc.

[27] Statistics show that 84.9% of Nigerians are literate and can either read or write in the official English language – World Population Review, 'Literacy Rate by Country 2024 - Nigeria' < https://worldpopulationreview.com/country-rankings/literacy-rate-by-country> accessed 10 August 2024.

consumer protection landscape. These are referred to as digital literacy and consumer literacy.

Starting with digital literacy, which includes computer literacy and internet literacy.[28] Digital literacy is the ability to use the internet to find, communicate, evaluate and process information using both cognitive and technical skills appropriately and in required proportions.[29] The digital market is based on information technology tools therefore, a given level of digital literacy is needed to use it. For example, knowing how to navigate the website to find the terms and conditions page, knowing how to find detailed product descriptions, knowing how to use the public Corporate Affairs Commission (CAC) register to verify the authenticity of business owners, etc. E-consumers must be able to navigate the market, its operations, loopholes, and risks, and self-protect against these risks, however, this is not the case in Nigeria. The United Nations International Telecommunications Union's digital opportunity index score[30] ranks Nigeria 155th globally and 22nd in Africa, putting it within the United Nations' low digital opportunity scores category of countries.[31] Other research into digital literacy in Nigeria shows low internet and computer literacy levels.[32] Many Nigerians are oblivious to how the digital environment works. Even those with digital knowledge possess a relatively low level of it.[33] While this low knowledge may be sufficient to complete purchases, it is inadequate to provide the level of risk awareness needed to sufficiently navigate and self-protect. Combining this level of digital literacy with the absence of a

[28] Buckingham David, 'Defining Digital Literacy' (2016) Nordic Journal of Digital Literacy, 21-34. See also Eshet Y., 'Digital Literacy: A Conceptual Framework for Survival Skills in the Digital Era' (2004) 13(1) Journal of Educational Multimedia and Hypermedia, 93-106.
[29] Eshet (*ibid*) 93.
[30] The Digital Opportunity Index (DOI) is a resource maintained by the United Nations International Telecommunication Union (ITU) that measures various information and communication technologies (ICT) indicators around the world and provides a comparison of technology and communications resources for various countries.
[31] United Nations International Telecommunication Union (ITU), *The Digital Opportunity Index (DOI)* <https://www.itu.int/ITU-D/ict/doi/material/WISR07-chapter3.pdf> accessed 20 July 2023. - The report highlighted that the country's low score is due to the absence of digital opportunity, infrastructure and utilisation.
[32] Edet Ani O., Uchendu C., and Atseye E., 'Bridging the Digital Divide in Nigeria: A Study of Internet Use in Calabar Metropolis, Nigeria.' (2007) 28 (6-7) Library Management. 355-365.
[33] *ibid.* 359

simultaneous physical presence, an ordinary Nigerian e-consumer becomes the perfect target for bad market practices.

With these factors, the level of risks e-consumers in Nigeria are exposed to comes as no surprise. In several cases, sellers are conscious of the country's low level of digital literacy and use it to their advantage when carrying out practices detrimental to consumers' interests.[34] As will be shown when discussing access issues in 2.3, several operational and infrastructural issues contribute to the low level of digital literacy. Access and continuous use are important in developing and improving digital literacy,[35] a situation that is less than ideal in the country. These digital literacy issues materialise into ineffective contracts, affecting e-consumers' adoption and the digital market's development.[36]

Consumer literacy is the use of literacy skills for consumption activities,[37] it involves the ability to navigate the market in a way that benefits and protects specific interests. While digital literacy deals with understanding the technology through which e-commerce transactions are carried out, consumer literacy applies on a more general scale, i.e., to both e-consumers and traditional consumers. Consumer literacy goes beyond basic reading and writing skills. It means knowing how to protect one's identity and using skills to achieve desired results while staying safe in the marketplace. It's about understanding and making smart choices when making purchase decisions.[38] Consumer literacy can be as simple as reading labels, knowing how to find products, how to place and cancel orders. It can also be as complicated as understanding and knowing - consumer rights, labelling practices, how to manage service encounters, dispute resolution mechanisms and processes, how to complain, missing information and where to find relevant information, the importance of information,[39] how to

[34] Etomilade-Oduola, Ifeoluwa, 'Cashless Policy and Consumer Protection: A Critical Appraisal of the Nigerian Cyber Laws' (2020) 100 Journal of Law, Policy and Globalization, p.12.
[35] Shopova T., 'Digital Literacy of Students and Its Improvement at the University' (2014) 7(2) Journal on Efficiency and Responsibility in Education and Science, 26-32.
[36] Okolie Ugo Chuks, and Awulika Happiness Ojomo. 'E-Commerce in Nigeria: Benefits and Challenges' (2020) 28(2) Humanities & Social Sciences Latvia, 1.
[37] Natalie Ross Adkins and Julie L. Ozanne 'The Low Literate Consumer', (2005) 32(1) Journal of Consumer Research' 93–105, 104.
[38] *Ibid.* 104
[39] Haeran Jae and Devon Delvecchio 'Decision Making by Low-Literacy Consumers in the Presence of Point-of-Purchase Information' (2004) 38(2) Journal of Consumer Affairs. 342-354.

use information efficiently for decision making, how to self-protect when conducting market activities, how to assess the risk involved with a purchase, and many other complex market activities as they emerge.

Consumer literacy in Nigeria is low,[40] Nigerian consumers are not fully informed on their rights in the marketplace,[41] they are oblivious of the conflict resolution mechanisms in the market,[42] they struggle to make informed decisions, etc.[43] The effect of this low level of consumer literacy goes to their decision-making and self-protection abilities, i.e. the competence to decide whether to interact or not to interact with a market activity, a given seller, or a specific product.[44]

The effects of consumer illiteracy in Nigeria are direr on e-consumers compared to their traditional counterparts. Admittedly, traditional consumers also require a given level of consumer literacy to protect themselves. However, they enjoy clarification advantages that mitigate the impact of this illiteracy. This is different for e-consumers, who are more dependent on information for market activities. The higher the dependence on information, the higher the literacy level needed. Realistically, it is impossible to completely re-balance the power imbalance in the digital market as sellers will always have access to better information,[45] possess superior bargaining powers, and dictate the market's general structure, terms, and operation. Therefore, Nigerian e-consumers need a level of literacy to self-protect and interact.

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[40] Ifijeh Goodluck, Iwu-James Juliana and Adebayo Oyeronke, 'Digital Inclusion and Sustainable Development in Nigeria: The Role of Libraries' (3rd International Conference on African Development Issues (CU-ICADI) 2016 Covenant University, Ota, Nigeria).

[41] Usman Dahiru Jafaru, Nurli Yaacob and Aspalella A Rahman 'Lack of Consumer Awareness: A Major Challenge for Electricity Consumer Protection in Nigeria.' (2015) 11(24) Asian Social Science 240-251, 242.

[42] Ukwueze, 'Legal Remedies for Consumers of Telecommunications Services in Nigeria.' (2012) The Nigerian Juridical Review 10.

[43] Nuruddeen Muhammad, Y. Yusof and N. A. Abdullah. 'Legal Framework for E-commerce Transactions and Consumer Protection: A Comparative Study.' (2016) 2(2) Bayero Journal of Private and Commercial Law 41-56. See also Ogunyombo Oludare, Olusola Oyero, and Kunle Azeez. 'Influence of Social Media Advertisements on Purchase Decisions of Undergraduates in Three Nigerian Universities.' (2017) 9(2) Journal of Communication and Media Research. 244-255.

[44] Viswanathan, Madhu and James Harris, 'Illiteracy and Innumeracy Among Consumers: The Dark Side of Information Processing,' (The Asia Pacific Conference of the Association of Consumer Research, Gold Coast, March 2020).

[45] Xu, Hong. "Is More Information Better? An Economic Analysis of Group-Buying Platforms." (2018) 19(11) Journal of the Association for Information Systems 1.

2.2.3: Access Issues - Technology and Electricity-Related Impediments.

The digital market's functionality is heavily tied to the digital environment, e-consumers need the internet and electronic devices to access the digital market. Statistics show that only 18% of Nigerian households have access to personal computers,[46] so reliance is placed on external sources for digital market access. While the emergence of mobile internet devices has reduced this access issue,[47] the number remains low as mobile internet users are only 48.12% of the population.[48] Cost has been identified as the primary reason for this access issue. 70% of non-internet users in the country claimed that affordability is the primary impediment.[49] The tools to access the digital environment require internet connectivity, power and electronic devices, the cost of which is not affordable to e-consumers, given that 40% of the country's population lives below the poverty line., i.e. below 137,430 naira ($105.96) annually.[50]

Internet access in Nigeria is expensive,[51] leading consumers to rely heavily on 'cyber cafes' for internet usage and digital market access.[52] Using cybercafes to engage the digital market carries several risks, particularly for information exploration and self-protection activities.[53] An examination of Nigeria's leading telecommunication network, Mobile Telephone Network Nigeria Limited (MTN)'s data plan, shows that the cheapest available data plan is forty

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[46] Statista, 'Share of Households Owning a Computer in Nigeria as of 2020, by Area' <https://www.statista.com/statistics/1268977/households-with-a-computer-at-home-in-nigeria-by-area/> accessed 21 July 2023.

[47] Recent studies reveal that many e-consumers access the digital market through mobile devices - Statista, 'Mobile Internet User Penetration in Nigeria from 2016 to 2026' <https://www.statista.com/statistics/972900/internet-user-reach-nigeria/> accessed 21 July 2023.

[48] *ibid*.

[49] Alliance for Affordable Internet, 'How Africa's Largest Economy Is Prioritizing Affordable Internet. - <https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2014/04/Nigeria-Case-Study-Final.pdf> accessed 21 July 2023.

[50] National Bureau of Statistics, 'Poverty and Inequality in Nigeria Report' <https://nigerianstat.gov.ng/download/1092> accessed 21 July 2023.

[51] Adeyeye M., 'E-Commerce, Business Methods and Evaluation of Payment Methods in Nigeria.' (2008) 11 (1) Electronic Journal Information Systems Evaluation, 1-6; Ajayi A, Aderounmu A., and Soriyan A., 'Improving the Response Time of Online Buyers in Nigeria: The Way Forward.' (2008) 13 (1) Journal of Internet Banking and Commerce, 1-10 and Egwali A., 'Customers Perception of Security Indicators in Online Banking Sites in Nigeria' (2009) 14 (1) Journal of Internet Banking and Commerce, 1-15.

[52] Cyber cafes are places where entrepreneurs provide Internet public access services for a fee - Adomi E., Okiy R., & Ruteyan J., 'A Survey of Cybercafés in Delta State, Nigeria.' (2003) 21 (5) The Electronic Library, 487-495.

[53] See chapter three.

megabytes of data, which expires at the end of the day.[54] Fifty Naira is five percent of the daily minimum wage in Nigeria.[55] It is not feasible to expect struggling consumers to incur such costs to ensure that they are protecting themselves in the digital market.

Electricity is another key issue. To access the digital environment, electricity is needed. Nigerians averagely have access to nine hours, and thirty minutes of electricity daily, with consumers living in rural areas having an average of 4 hours daily.[56] Energy providers dictate when to power households and when to switch off electricity. To supplement the deficiency, people who can afford to generate their electricity use generators that run on petroleum or diesel at an average of three thousand Naira for the remaining 14.5 hours.[57] This is 300% of the daily minimum wage in Nigeria.[58] Again, expecting consumers to exert such costs to ensure their decisions are informed is not feasible. These issues affects both e-commerce adoption, and e-consumers' ability to self-protect, and make informed decisions.

Digital literacy, as discussed in 2.2.2, is key to access and continuous use of the digital environment. Innovations happen every day, and the dynamics of the market often change. The more consumers access the digital market, the better they are at using it, keeping up with market changes, making informed decisions, and becoming more digitally literate. With access issues, usage is limited, consequently removing the learning-on-use opportunity. This also impedes their ability to keep up with the ever-changing nature of the digital environment to the level needed for risk assessment, risk management, making informed decisions and self-protecting. Furthermore, the Nigerian digital market is plagued with fraudulent and deceptive sellers, e-consumers need to be vigilant and digitally competent to identify clues that would help fish out these perpetrators. However, due to these access issues, Nigerian e-consumers are always in a rush to maximise their time in cyber cafes or their electricity and internet resources. With this, there is a hurry to complete transactions with minimal costs

[54] MTN Nigeria, 'MTN Data Plans' <https://www.mtnonline.com/personal/data/data-plans/> accessed 21 July 2023.
[55] Trading Economics 'Nigeria National Minimum Wage (2020)' <https://tradingeconomics.com/nigeria/minimum-wages > accessed 21 July 2023.
[56] Power Poll < https://noi-polls.com/power-poll-result-release/ > accessed 21 July 2023.
[57] Bloomberg, 'Nigeria Runs on Generators and Nine Hours of Power a Day' (23 September 2019) < https://www.bloomberg.com/news/articles/2019-09-23/nigeria-runs-on-generators-and-nine-hours-of-power-a-day > accessed 21 July 2023.
[58] Trading Economics, Nigeria Minimum Wage (n.132).

possible, causing them to miss clues that would have prevented them from falling victim to deceptive practices.

These access issues also increase information costs. Information cost contributes to Nigerian e-consumers' exposure to risks, consequently impeding e-commerce adoption.[59] When consumers cannot effectively navigate the market with the level of diligence and skills needed as those activities increase costs, they become exposed to risks, self-protection also becomes harder, if not unachievable, leading to them exiting the market on the occurrence of preventable mishaps.

2.2.4: Legal Uncertainties when Contracting in the Digital Market.

To protect e-consumers, contracts formed online must be enforceable. As stated in 2.3 below, to ensure uniformity in the marketplace, the foundational principles of contract law should regulate all agreements in the digital market. However, complementary and supplementary frameworks should be introduced to bring the peculiarities of the digital market within the confines of these existing principles.

The lack of definite laws and judicial precedents on e-consumer issues and e-contracts has caused legal uncertainty in the Nigerian digital market.[60] Legal certainty is essential for the functionality of any given market,[61] the lack of which has detrimental effects.[62] In commercial law, legal uncertainty could occur when a new doubt arises within the scope of the existing legal framework, which does not change the existing framework but carries implications for anyone relying on it.[63] It can also be an absence of judicial interpretation on a given legal issue/question/doubt.[64] Both forms of uncertainties exist in the Nigerian legal system's approach to contracting in the digital environment. An example of the former is the

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[59] Taher Ghada. 'E-Commerce: Advantages and Limitations' (2021) 11(1) International Journal of Academic Research in Accounting Finance and Management Sciences, 154

[60] Aidonojie Paul Atagamen, Odojor Oyenmwosa Anne, and Odetokun Olukayode Oladele, 'An Empirical Study of the Relevance and Legal Challenges of an E-contract Agreement in Nigeria' (2020) 12(3) Cogito, 2066

[61] Clarke M.A. *et al.,* Commercial Law: Text, Cases, and Materials. (2017 Oxford University Press.) 10 - "*...they [market stakeholders] require the courts' decisions on commercial issues to be predictable so that they know where they stand*".

[62] MacNeil Iain 'Uncertainty in Commercial Law.' (2009) 13(1) Edinburgh Law Review 68-99.

[63] Waddams Stephen M, *Dimensions of Private Law: Categories and Concepts in Anglo-American Legal Reasoning* (Cambridge University Press, 2003).

[64] *Ibid.* 70

uncertainties on the level of protection given to e-consumers for specific purposes under the implied term of purpose, given that pre-contractual communication hardly occurs in the digital market.[65] And the latter is the apparent lack of judicial decisions on e-consumers' issues and contracting in the digital environment. While this lack of judicial action can be attributed to the fact that consumer disputes hardly go to court, the FCCPC has failed in its duty to develop Nigerian consumer law. Government bodies usually approach the judiciary for declaratory judgements on issues creating legal uncertainties within their portfolio or functions. However, Nigerian consumer administrative bodies[66] are yet to seek declaratory clarifications on the legal uncertainties surrounding electronic contracts.

Legal certainty, or the lack thereof, influences consumer's decision-making and e-commerce adoption.[67] E-consumers should be able to make fully informed decisions with a given level of awareness of the legal standing on issues before them. In many cases, decisions in the market are influenced by the definite or indefinite understanding of the position of the law regarding a particular issue. Sellers have better resources, therefore, they are always aware of the blurred line and the legal loopholes such as the obligation not to disclose, the principle of caveat emptor, access to justice complications etc. With this knowledge, they often adopt trading practices that are unfair to consumers but profitable to them, knowing fully well that the law is uncertain on these practices. The blur between what is permitted and what is not, breeds the risk of unconscionable practices.[68]

E-consumers might struggle to decide whether to challenge a contracting issue or not, as there are no legal frameworks or judicial precedents to assess the potential success of claims. Considering the access to justice issues in the country (discussed in 2.2.6), the uncertainty risk would not measure up to the possible benefit, hence, consumers become discouraged from seeking redress, instead, they exit the market for alternatives such as the traditional market.

[65] See 4.3.2 for more on this.
[66] The FCCPC and its predecessors, the CPC.
[67] Honigsberg C, Jackson RJ Jr and Squire R, 'How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment' (2017) 60 The Journal of Law & Economics 673.
[68] MacNeil (n.139) 72.

Legal uncertainty affects consumer trust in the market, impedes self-protection efforts, affects consumer confidence,[69] and stagnates e-commerce and consumer law's development.

2.2.5: Unconscionable and Unfair Contractual Arrangements.

The Nigerian courts take a cautious approach when deciding claims or issues revolving around the content of contracts.[70] While the issue of unconscionable and unfair clauses is already prevalent in the Nigerian market,[71] it gets worse in its digital market due to the nature of the market, particularly the absence of pre-contractual communications and e-consumers' behaviour of not reading contract clauses before agreeing to them. While most consumer contracts are standard in form, the Nigerian legal system's position on pre-contractual negotiating communications[72] puts e-consumers in a less protective situation compared to traditional consumers. Traditional consumers are able to make amendments to standard clauses with proffered pre-contract communications.[73] Furthermore, e-consumers are unable to clarify uncertainties when e-sellers employ framing and advertising tactics in presenting terms and information, a practice common in Nigeria. For example, a traditional consumer will be able to ask if a blender defined as "multi-purpose" can blend all types of nuts, an affirmative response from the seller's salesperson would amend the standard terms or any caveat in fine print, allowing the traditional consumer to be able to claim remedies if he finds that the blender cannot blend though nuts such as Bambara nuts. A defence by sellers that the "entire agreement" clause excludes the representation of the salesperson on the capacity of the blender would fail. With the absence of pre-contractual communication channels in the Nigerian digital market (as discussed in 4.3.2), Nigerian e-consumers do not have these advantages.

In the digital market, standard form of contracting is indispensable, consumers have to either agree to them or walk away from the transaction. With the take-it-or-leave-it advantage,

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[69] Petrauskas Feliksas and Eglė Kybartienė. 'Online Dispute Resolution in Consumer Disputes' (2011) 18(3) Jurisprudencija, 921-941.
[70] JFS Investment Ltd v Brawal Line Ltd (n.39).
[71] Ilobinso Ihuoma, 'Protecting Consumers in the Online Market from Unfair Contract Terms: The Nigerian Perspective' (2018) 14(1) Nigerian Journal of Contemporary Law, 1.
[72] Alhaji Auwalu Bura Hassan V. Godwin Obodoeze & Ors (2012) LCN/5254(CA). For more explanation on this, please see chapter four.
[73] *ibid*.

Nigerian e-sellers have become notorious for riddling their contracts with unconscionable clauses. The market situation is so dire that Nigerian e-consumers no longer bother reviewing clauses.[74] They believe that examination achieves no purpose as the clauses presented are non-negotiable and cannot be clarified.[75] To save information costs, they accept the terms and bridge any doubt with excessive optimism.[76] Furthermore, they see no justification in reading terms as similar terms exist throughout the market. They convince themselves that reading terms is nothing but a waste of time, one that increases transaction costs. This leads to uninformed decisions, ineffective contracts and a consequential exit from the digital market. The presence of unfair terms in the digital market goes to its development. A market filled with unfair terms would struggle to earn its consumers' trust as there would always be a lurking fear by consumers. Regardless of its detrimental effects, standard form contracts are indispensable in the digital market.[77] Therefore, there is a need to put in place frameworks to correct the negative result of this form of contracting. One of the ways to do this are through unfair terms rules, this is examined in chapter five.

2.2.6: Access to Justice.

An examination of issues affecting the ordinary Nigerian e-consumer would not be complete without discussing the country's poor access to justice issue. It is important to state that access to justice is not the focus of this thesis. Examination here only informs the thesis on key access to justice impediments when assessing the efficiency of the FCCPA 2018 and recommending improvements. For example, it examines whether the FCCPA 2018's statutory remedies are suitable for e-consumer protection given the access to justice issues vis-a-vis the value of consumer goods? It also informs this thesis on how to recommend pragmatic and efficient mechanisms.

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[74] Ilobinso (n.148) 55.

[75] This is Faure and Luth referred to as the behavioural rational apathy theory – See Faure and Luth (n.96) 337-358.

[76] *ibid*.

[77] Becher (n.77) 117. See also Bakos Yannis, Florencia Marotta-Wurgler, and David R. Trossen. 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts.' (2014) 43(1) The Journal of Legal Studies. 1-35.

Access to justice is the ability of an individual to seek and obtain remedies through formal or informal institutions of justice.[78] It includes the availability of an impartial justice system.[79] The Nigerian Constitution provides that fair hearing as a fundamental right includes ensuring that judicial proceedings are dealt with within a reasonable time.[80] The Supreme Court also maintained that 'fair hearing' includes access to speedy trials.[81] With speedy trial being a fundamental right in Nigeria, it is reasonable to expect that the judicial process would indeed be speedy, however, it is not. Nigeria is currently ranked 77th of 102 countries by the World Justice Project.[82] Before examining the access to justice issues in Nigeria, it is important to discuss the effects of the access to justice crisis on consumer protection.

Access to justice crisis goes to the root of consumer protection, as consumer policies would not have the expected impact without adequate redress channels. With the resources at their disposal, Nigerian sellers are very much aware that, in most cases, consumers are unwilling to exert the cost and efforts necessary to pursue redress on low-value goods. Therefore, they exploit consumers without the fear of being held liable for wrongdoings.[83] Exploitation here includes - non-adherence to consumer protection frameworks, refusal to enforce consumer rights when confronted or demanded, the prevalence of unfair terms in consumer contracts, etc. On the other side, adequate access to justice self-regulates sellers who know they have to act legally or risk liability from redress claims.[84] This increases consumer confidence and trust,[85] facilitates market development, improves the level of power imbalance in the market, and improves consumer law jurisprudence.[86]

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[78] Gutterman Alan, *Older Persons' Access to Justice* (Oakland CA: Older Persons' Rights Project, 2022).
[79] Francioni Francesco, *Access to Justice as a Human Right* (OUP Oxford, 2007).
[80] Constitution of the Federal Republic of Nigeria C23 LFN 2004, s.36.
[81] Ariori V. Elemo (1983) 1 S.C. N.L.R. 1. - Justice Aniagolu at 28 maintained that '*... fair hearing, of which speedy trial is one of the factors that go to make it fair, is therefore, in my view, a right involving the public policy that judicial proceedings shall not fall below a certain standard, namely, a standard that trial of cases must be fair.*'
[82] World Justice Project is a global metric for measuring access to justice and rule of law - World Justice Project 2021, 'Global Scores and Rankings' < https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index/global-scores-rankings > Accessed 3 June 2022.
[83] Usman Dahiru Jafaru, Nurli Yaacob and Aspalella A Rahman 'An Inquiry on the Affordability of Legal Services and the Appropriateness of the Regular Courts for Consumer Redress in Nigeria' (2016) 7 Beijing Law Review, 83-94, 84..
[84] Wrbka Stefan, *European Consumer Access to Justice Revisited* (Cambridge University Press, 2014).
[85] *ibid*. See also Gibson L., 'Access to Justice and Consumer Redress within a Single Market' (1992) 15 Journal of Consumer Policy. 407-415.
[86] Wrbka (n.161).

A key factor to remember when examining access to justice in consumer disputes is the relatively low value of consumer goods .[87] This factor goes to consumers' cost versus benefit assessment when deciding whether to pursue redress. Cost is one of the biggest contributors to global consumer access to justice crisis.[88] These costs include but are not limited to attorney fees, judicial administrative fees, logistics costs, information costs, etc. It also includes the unquantifiable time it takes to resolve disputes and efforts from consumers. With these cost-related issues, only a small number of consumer grievances reach dispute resolution channels, this affects the development of consumer law. It is when cases are adjudicated upon that judicial precedent can increase legal certainty and develop an area of law.

A recent study discovered that delay and cost are the biggest contributors to access to justice in Nigeria, over a hundred million Nigerians struggle to access justice due to factors linked to cost.[89] This is not surprising as 40% of the country's population lives below the poverty line.[90] Before the commencement of any proceeding, litigants have to pay case-commencement fees. For every process filled, fees are paid to the court registry and the commissioner of oaths. A closer look into procedural steps for dispute resolution revealed cost implications that consumers living 40% below the poverty line could not reasonably be expected to incur for low-value consumer goods.

To increase the chances of success in the claims, and because of the fear of ruining the claim (*res judicata*) for lack of sufficient legal knowledge,[91] consumers have to rely on legal representation. Adequate legal representation is key in delivering quality justice to consumers

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[87] Moxley Lauren., 'Zooming Past the Monopoly: A Consumer Rights Approach to Reforming the Lawyer's Monopoly and Improving Access to Justice.' (2015) 9 Harvard Law & Policy Review 553.

[88] Liao Z. 'The Recent Amendment to China's Consumer Law: An Imperfect Improvement and Proposal for Future Changes' (2014) 5 Beijing Law Review. 163-171. See also, L'Heureux N. 'Effective Consumer Access to Justice: Class Actions' (1992) 15 Journal of Consumer Policy 445-462; and Schmitz J. 'Access to Consumer Remedies in the Squeaky Wheel System' (2013) 39 Pepperdine Law Review. 279-366.

[89] Igbintade W., 'About 100m Nigerians Don't Have Access to Justice' (2013) Adelodun. 1.

[90] The country's poverty line is - 137,430 naira ($381.75) annual living cost. National Bureau of Statistics, 'Poverty and Inequality in Nigeria Report' <https://nigerianstat.gov.ng/download/1092> accessed 23 July 2022.

[91] These include procedural steps like pre-action notices, mandatory dispute resolution steps, statute-barred limitations, filing before a court that lacks jurisdiction (territorial or substantive), inadequate pleadings, etc. These procedural steps often go to the root of the claim. Without legal knowledge, consumers might not be aware of, further increasing the costs or, in most cases vitiating their entire claim.

and bridging the access to justice gap.[92] The Supreme Court has also maintained that access to legal representation is a key part of access to justice.[93] Legal representation in Nigeria is expensive. E-consumers need competent representation, as most sellers can afford to hire competent legal teams. With the legal knowledge gap, e-consumers struggle to effectively represent themselves against e-sellers' legal teams. Expecting e-consumers to exert the needed cost to enforce their consumer rights is not feasible,[94] particularly with the limitation of litigation costs in Nigeria to tokens of victory.[95]

The popularity of arbitration in Nigeria does not help reduce this cost as they are equally, if not more expensive, than the traditional court system.[96] This is primarily because they are privately run. A look at the Lagos Court of Arbitration's fees schedule for small claims proceedings reveals the sum of N25,000 for administrative fees and N105,000 for Arbitrator fees. Expecting e-consumers to exert these fees for small claims transactions is simply not feasible.[97] Furthermore, arbitration is contractual in nature, and it is only an option if e-sellers offer them in their terms and conditions. Therefore, e-consumers' access to justice through arbitration is controlled by e-sellers. While mediation and negotiation have been helpful, the knowledge gap between the parties, the use of legal practitioners by sellers, the imbalance of negotiating power, and the non-binding nature of terms of settlements are key issues affecting their efficiency.[98]

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[92] Davis M., Fisher F., Hetherington F., and Pollock J., 'Transcript: Why We Need a Counsel in Civil Matters Where Basic Human Needs Are at Stake' (2014) 64 Syracuse Law Review. 369.

[93] Peenok Investment Ltd Vs Hotel Presidential Ltd (2011) ALL FWLR (Pt.571) 1428; Uzowulu & Ors v. Akpor & Ors (2014) LPELR-22190(CA); S & F Panoramic Tourist Co. Ltd & Ors v. Ukhuegbe & Ors (2020) LPELR-52101(CA).

[94] Onyema E. 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC' (2013) 2 Apogee Journal of Business, Property & Constitutional Law. 96-130.

[95] The costs awarded by Nigerian courts are usually "a token of victory" which is sometimes not up to 10% of the entire litigation cost incurred by the parties. - GTDT, 'Complex Commercial Litigation, Nigeria' (2019) <https://gettingthedealthrough.com/area/102/jurisdiction/18/complex-commercial-litigation-nigeria/> accessed 26 July 2023.

[96] OJ Olujobi, AA Adeniji, OA Oyewunmi, AE Oyewunmi, 'Commercial Dispute Resolution: Has Arbitration Transformed Nigeria's Legal Landscape?' (2018) 9(1) Journal of Advanced Research in Law and Economics, p.204-209.

[97] Lagos Court of Arbitration., 'Fees Schedule' https://www.lca.org.ng/wp-content/uploads/2018/08/Fees-Schedule.pdf Accessed 12 October 2023.

[98] Rose Ohiama Ugbe, Brian Anyatang, Kooffreh B, and Anne Agi, 'Consumer Redress Channels under Nigerian Laws: A Comparative Analysis' (2020) 104 Journal of Law, Policy, and Globalization. 18.

Without a functional dispute resolution mechanism, consumers who feel cheated, but realise that justice is priced beyond their means, will always feel frustrated..[99] Behavioural studies reveal that when access to justice costs trumps the benefit to be derived from seeking redress, consumers elect against accessing justice,[100] rather, they exit the market-in-issue for alternatives.[101] Instead of rectifying their purchasing experience and rebuilding positive rational expectations,[102] they retain the negative experience, dent their confidence in the market and the consumer protection system, spread information on the experience, and encourage others to exit the market, consequently affecting the development of the digital market.

Aside from costs, delay and tardiness of the justice system is another contributor to Nigeria's access to justice crisis. The Nigerian court system is too cumbersome, slow and bureaucratic, therefore it is not suitable or efficient for consumer redress.[103] Consumers who approach the courts struggle to get redress timeously. The average duration for civil cases in Nigeria is fifteen years (including appeals) before final resolution.[104] Delay increases cost, particularly, the time and effort exerted during these lengthy trials, legal representation costs, etc. As shown above, cost affects consumers' redress-seeking decisions.

Another contributor to delay is the abuse of court processes by legal practitioners in Nigeria.[105] Knowing consumers have limited resources and cannot afford lengthy trials, sellers

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[99] Jones M., and Boyer B. 'Improving the Quality of Justice in the Marketplace: The Need for Better Consumer Remedies' (1971) 40 The George Washington Law Review. 357.

[100] Hadfield Gillian 'The Cost of Law: Promoting Access to Justice through the (un) Corporate Practice of Law' (2014) 38 International Review of Law and Economics. 43-63.

[101] Rickett Charles, and Thomas Telfer, *International Perspectives on Consumers' Access to Justice (eds).* (Cambridge University Press, 2003).

[102] The rational expectations theory posits that individuals base their decisions on human rationality, information available to them, and their past experiences. - For more on consumer confidence and rational expectations, see Delorme Charles D., David Kamerschen, and Lisa Ford Voeks. 'Consumer Confidence and Rational expectations in the United States compared with the United Kingdom." (2001) 33(7) Applied Economics. 863-869 and Acemoglu Daron and Andrew Scott. 'Consumer Confidence and Rational Expectations: Are Agents' Beliefs Consistent with the Theory?' (1994) 104 (422) The Economic Journal. 1-19.

[103] Kakalik J, Dunworth T., Hill A., McCaffrey D., and Oshiro M. 'Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management under the CJRA' (DTIC Document 1996).

[104] Mondaq.com 'Effect of Appeals On Course Of Trials – Litigation, Mediation & Arbitration – Nigeria' <https://www.mondaq.com/nigeria/trials-appeals-compensation/309008/effect-of-appeals-on-course-of-trials> accessed 4 September 2023.

[105] Okoli P. and Umeche I. 'Between Use and Abuse: An Examination of the Efficacy of Interim and Interlocutory Injunctions in Nigeria.' (2011) 37 (2) Commonwealth Law Bulletin. 241-254.

are notorious for using court processes to frustrate redress proceedings.[106] The longer proceedings take, the less willing consumers are to continue.[107] There is a need to promote self-protection and self-enforceable redress mechanisms so that the pressure on an already ineffective justice system can be reduced.[108] When introduced, consumer education and efforts are needed to improve consumers' awareness of these redress mechanisms. Without adequate knowledge of these tools and how they operate, their impact will be limited.

A question that might arise is why e-consumers in Nigeria should engage with the digital market, given that the market and legal system are so fraught with problems. The answer to this question exceeds the scope of this thesis as this thesis does not seek to solve these social issues. The aim is to identify them and examine how they affect consumer protection interventions in Nigeria. However, this thesis maintains that despite these issues, denying Nigerians the advantages of the digital market would be unfair, particularly as it has been described as the future of commerce.[109] The Nigerian market will have to catch up to the digital environment at one point or the other. The aim should not be deterring Nigerian consumers from purchasing in the digital market, it should be making the market safer for them to purchase. With the understanding of the current state of the Nigerian digital market and the various issues faced by ordinary Nigerian e-consumers, this chapter proceeds to examine e-consumers protection under the Nigerian legal system. This will inform this thesis on why the country's regulatory approach to e-consumer protection has failed to correct some of the aforementioned issues.

2.3: Consumer Protection in Nigeria.

[106] Ibid 244
[107] *ibid*

[109] Rayport Jeffrey F., and Bernard Jaworski. *Introduction to E-commerce* (McGraw-Hill Irwin MarketspaceU, 2004) 32

Consumer protection is a regulatory response to market failure[110] aimed at protecting consumer rights,[111] regulating market behaviour,[112] correcting power imbalance,[113] fostering social benefits,[114] fostering market development,[115] improving consumer trust and confidence in a given market,[116] etc. Efficient consumer protection is a key contributor to any market's growth.[117] To understand Nigeria's approach to consumer protection, one must understand the foundation of the Nigerian legal system, particularly its impact on consumer protection in Nigeria.

2.3.1: The Received English Law – A Foundation to Nigerian Consumer Protection.

The Nigerian legal system is heavily influenced by the received English law, a group of legal frameworks applicable in England as of 1900. Through the Colonial Laws (Validity) Act of 1865, the colony of Nigeria localised the laws of England, as existing in 1900 as its laws. These laws have remained a vital part of every aspect of the system up to date. At independence in 1960, the Law Revision Committee decided that severing the connection between English law and the Nigerian legal system was unreasonable, as the entire system is already built on English

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[110] Einer Jeffrey and Evan J., *Contemporary Regulatory Policy* (Lynne Rienner Publishers, New York 2000) 4

[111] Winn Jane K., *Consumer Protection in the Age of the 'information Economy* (Routledge, 2016). See also Averitt N., and Lande R., 'Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law', (1997) 65 Antitrust Law Journal, p.716.

[112] Ghapa Norhasliza and Nor Aida Ab Kadir, 'Information Regulation: A Measure of Consumer Protection' (2021) Pertanika Journal of Social Sciences & Humanities 29.

[113] Bobonazarov Alisher, 'The Arbitrability of Consumer Disputes: How to Avoid Power Imbalance?' (2003) 1(3) International Conference on Management, Economics & Social Science. 12.

[114] Jackson Howell E., and Paul Rothstein. 'The Analysis of Benefits in Consumer Protection Regulations' (2019) (9) Harvard Business Law Review, 197.

[115] Poliakh Serhiy, 'The Consumer Protection as a Driver of Innovative Development: Case Study for Consumers of Financial Services' (2018) 2 Marketing and Management of Innovations, p.378-387.

[116] Dickie John, 'Consumer Confidence and the EC Directive on Distance Contracts' (1998) 21(2) Journal of Consumer Policy, 217-229.

[117] European Union, 'Consumer Policy: Principles and Instruments' <https://www.europarl.europa.eu/factsheets/en/sheet/46/consumer-policy-principles-and-instruments#:~:text=Effective%20consumer%20protection%20policy%20ensures,enhanced%20protection%20for%20vulnerable%20consumers> Accessed 19 August 2023 See also - Harland D., 'The United Nations Guidelines for Consumer Protection (1987) 10 Journal of Consumer Policy, 245–266. Agustiawan Hendri, Khoirul Umam, and Mohammad Maleka, 'The Importance of Consumer Protection Law Revision in the Development of E-Commerce in the Digital Transformation Era in Indonesia' (2022) 1(2) Proceedings of Islamic Economics, Business, and Philanthropy, 305-317. Alhusban Ahmad, 'The Importance of Consumer Protection for the Development of Electronic Commerce: the Need for Reform in Jordan' (PhD Thesis, University of Portsmouth, 2014).

law jurisprudence.[118] With this incorporation, the UK's Sale of Goods Act 1893 (SGA 1893) and the English contract law system became the primary consumer protection framework from early post-colonial era Nigeria till 2018.

Apart from the SGA 1893, consumers in Nigeria are also protected under other received English civil laws, such as liability for defective products[119](liabilities arising under contract law,[120] and tort[121]) and protection under tort law (negligence[122]).[123] In *Ibidapo V Lufthansa Airlines*,[124] the Supreme Court held that laws adopted through the received English laws remained valid in Nigeria even after they had been repealed in England, unless repealed by a Nigerian statute[125] or declared invalid by a Nigerian court or tribunal.[126] The result of this is that, despite the FCCPA 2018's enactment, the provisions of the SGA 1893, and several contract and tort law principles[127] that are not in contravention with the FCCPA 2018 remain applicable to consumer contracts in Nigeria.

From a judicial point of view, the dearth of consumer contract-specific laws forced Nigerian courts to treat consumer contracts as any other commercial contract and apply the same principles across the board. Of course, consumer contracts are also contracts, however consumer contract-specific factors such as - the imbalance of contracting power in the consumer market,[128] information asymmetry between sellers and consumers,[129] the risks

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[118] Marshall H., 'The Future of 'Received' English Law in the Countries of the Commonwealth' (1982) 15(1) The Comparative and International Law Journal of Southern Africa, 81–91.
[119] See Monye F, *Law of Consumer Protection* (Spectrum Books Ltd 2003) 122-153.
[120] Khalil and Dibbo v. Mastrionikolis (1948) 12 WACA 462. See also British and Overseas Credit Ltd v. Animashaun (1961) 1 All NLR 343.
[121] Boardman v Guinness {Nig} Ltd. {1980} NCLR 109 at 261.
[122] Adeosun V. Adisa [1986] 5 NWLR (pt. 40).
[123] See Monye (n.19) 155-191.
[124] 3 (1997) 4 NWLR 124.
[125] The express repeal of a law occurs when the provision of another statute clearly provides for the law's repeal. However, a law is impliedly repealed when the enactments in a later law are inconsistent with the said law. Trade Bank Plc v. LILGC & Ors (2002) LPELR-6175(CA).
[126] See also Nze Bernard Chigbu v Tonimas Nig. Ltd (2006) NWLR (Pt.984) 189. 2.
[127] These includes but are not limited to caveat emptor, party autonomy, freedom of contract, misrepresentation, etc.
[128] Ramsay I., *Consumer Law and Policy* (3rd Edn, Hart Publishing 2012) 298. See also Howells Geraint, 'The Potential and Limits of Consumer Empowerment by Information' [2005] 32(3) Journal of Law and Society. 349-370.
[129] ibid. 351 (Howells).

associated with standard form contracts,[130] peculiarities of the digital environment,[131] etc., put e-consumers at a detriment if the standard of protecting buyers in Business-to-Business (B2B) contracts are applied to B2C e-contracts.[132] The principle of judicial precedent in Nigeria means that the decisions of the Nigerian courts on contract law issues in B2B contract claims will be applied to contract law issues in B2C claims. It is essential to mention that reliance on the decisions, *ratio decidendis* and *obiter dicta* from these cases are indispensable for the analysis to be made in this thesis as they are the only buyer protection precedents interpreting sale of goods laws in Nigeria. However, this thesis will be careful to keep in mind the peculiarities of the consumer-seller relationship at relevant points of application.

2.3.1.1: Key Principles - Party Autonomy, Freedom of Contract and Caveat Emptor.

This subchapter examines three contract law principles relevant to contractual relationships under the Nigerian legal system to determine the effects of these principles on B2C contractual relationships in Nigeria. The result of which will assist this thesis in assessing the efficacy of the FCCPA 2018 for protecting Nigerian e-consumers. For example, it will give the needed background on why the FCCPA 2018 introduced information rules[133] (a set of rules regulating how information is provided to consumers) but failed to introduce mandatory information provision rules (a set of rules that mandates the provision of certain information to consumers). The short answer is - the caveat emptor principle.

Historically, the principles of freedom of contract and party autonomy argue for limited intervention by the government into contractual relationships. They frown against paternalism in any form.[134] From a regulatory and economic perspective, they are key

[130] Wilhelmsson Thomas, and Chris Willett, 'Unfair Terms and Standard Form Contracts' (2010) 1159 (202) Handbook of Research on International Consumer Law, 158.
[131] Kwilinski, Aleksy, et al. 'E-Commerce: Concept and Legal Regulation in Modern Economic Conditions' (2019) 1 Journal of Legal, Ethical and Regulatory Issues, 1.
[132] Zheng S., *Electronic Consumer Contracts in the Conflict of Laws* (1st Edn, Hart Publishing Ltd 2009) 169.
[133] FCCPA 2018, s.114.
[134] Ebejer James and Michael Morden, 'Paternalism in the Marketplace: Should a Salesman be his Buyer's keeper?' (1988) 7(5) Journal of Business Ethics, 337-339.

components of a free market.[135] They argue that men of full age and competent understanding are competent to enter into agreements as they see fit – because – "every man is the master of the contract he may choose to make."[136] As long as there are no elements of misrepresentation or contradictions to public policy, the duty of the state is limited to giving effect to the parties' intention as expressed in and by their agreement.[137]

With minimal exceptions, the Supreme Court of Nigeria, in several cases, has reaffirmed the dominant position of these principles in many cases, regardless of the subject matter or the type of contractual relationship.[138] A careful examination of these decisions reveals an inherent presumption of equality between contracting parties.[139] The courts operated under the premise that contracting parties negotiate on equal footing,[140] have the capacity to look after their interests, have equal bargaining strength, and possess the required capacity to understand the consequence of their contracting actions and the contract terms before them.[141] However, these presumptions rarely exist in consumer contracts conducted in the digital market.[142] Sellers are usually the ones with relevant product knowledge and power, and the physical possession of the goods. E-consumers, more often than not, do not possess comparable advantages.[143] While an argument can be made that, with the internet, there is a wealth of information available, and this knowledge gap is bridged, such an argument would fail as insights into consumer behaviour, the various issues identified and discussed in 2.2 and 3.2.1 will show that, for the ordinary Nigerian e-consumer, excessive availability of

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[135] Iwok, Amanim and Bassey Kooffreh, 'An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria' (2014) 29 Journal of Law, Policy, and Globalization, 1.
[136] Sonner (Nig.) Ltd v. Partnereedn M.S. Nordwind (1987) LPELR 3494 (SC).
[137] Lignes Aeriennes Congolaises v. Air Atlantic Nigeria Ltd (2005) LPELR 5808 (CA). (*Pacta sunt servanda*).
[138] Sonner (Nig.) Ltd v. Partnereedn M.S. Nordwind (n.36) 3494.
[139] Onyido v. Ajemba (1991) 4 NWLR (Pt. 184) 203 at p.228. See also JFS Investment Ltd v. Brawal Line Ltd & Ors (2010) LPELR-1610(SC), Baba v. Nigerian Civil Aviation Training Centre & Anor (1991) LPELR-692(SC), Eholor v. Osayande (1992) LPELR-8053(SC) and BFI Group Corporation v. B P E (2012) LPELR-9339(SC).
[140] Sonner (Nig.) Ltd v. Partnereedn M.S. Nordwind (n.36). – The Court of Appeal maintained that *"there is a presumption of equality between two consenting contracting adults."*
[141] *ibid*.
[142] Nuruddeen Muhammad Yusof, and Abdullah A., 'Legal Framework for E-commerce Transactions and Consumer Protection: A Comparative Study' (2016) 2(2) Bayero Journal of Private and Commercial Law, p.41-56. See also Panagariya Arvind, and Cnuced E., 'E-commerce, WTO and Developing Countries' (2000) United Nations, and Willett C., 'The Directive on Unfair Terms in Consumer Contracts and its Implementation in the United Kingdom' (1997) 5(2) European Review of Private Law, 3.
[143] Ukwueze F, 'Unfair Terms in Consumer Contracts in Nigeria: The Need for Stricter Statutory Control' (2007) 3 Consumer Journal, 41-63.

information is not the answer to this information failure.[144] Chapter three discussed information availability vis-a-vis Nigerian consumer's ability to conduct effective information exploration.

Contract law theorists' assertions that the freedom of contract principle seeks to preserve contracting parties' autonomous power to make contracting decisions is inefficient for consumer contracts, given its dynamics. In its pure form, a consumer's decision is not autonomous or freely made when it is based on the consumer's unequal standing. This inequality could be from uninformed decisions arising from the lack of the necessary information needed to exercise the presumed contractual autonomy, the inability to access and assess the subject matter of the contract before purchase, the inability to negotiate the terms presented, the lack of pre-contractual communication to clarify confusions and information, etc. Consumers' "contractual freedom/autonomy" is flawed if, in reality, they suffer from factors that prevent them from being on equal footing with e-sellers when exercising their "freedom/autonomy".[145] True autonomy is only achieved when contracting parties are, in reality, on equal footing.

The caveat emptor principle is emblematic of the principles mentioned above.[146] Translating to '*let the buyer beware'*, this principle places on buyers the burden and responsibility of ensuring that they are satisfied with both the product and terms before contracting.[147] It is a warning to intending buyers that the subject matter of purchase is as it is, and that sellers are not responsible for any defect, except in limited circumstances.[148] Under this principle, inattention or naivety would not give rise to an actionable claim,[149] the burden of determining

[144] Hadfield *et al.* extensively discussed how information-based intervention are not always efficient in consumer protection and how availability of information does not breach the knowledge and information gap between sellers and consumers. For more, see - Hadfield G., Howse R., and Trebilcock M., `Information-Based Principles for Rethinking Consumer Protection Policy' (1998) 21 Journal of Consumer Policy, p. 135-143.
[145] David Kastle-Lamparter, "Pre-Contractual Information Duties" in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018) 385 – 342.
[146] Rares Steven, 'Striking the Modern Balance between Freedom of Contract and Consumer Rights.' [2014] 28(3) Commercial Law Quarterly: The Journal of the Commercial Law Association of Australia, 7-16.
[147] Sagay E, *Nigerian Law of Contract* (Spectrum Law Publishing, Ibadan, 1993). 11.
[148] LeViness Charles T., 'Caveat Emptor Versus Caveat Venditor' [1942] 7 Maryland Law Review 177.
[149] Ewan McKendrick, *Goode on Commercial Law* (5th Edn, Penguin Books 2016) 1.

suitability, or lack thereof, is mainly with buyers.[150] Applying these foundational principles is detrimental to consumer interests, particularly e-consumers, given the peculiarities of contracting in the digital market.

Given the nature of the market, information is mostly all that e-consumers have to access the quality of choices available in the market and make purchase decisions. E-consumers' ability to self-protect is heavily tied to their access to relevant information and the ability to use these pieces of information for informed decision-making. This creates the need for a market situation with perfect information,[151] any deviance from which could lead to information failure. As maintained by economic theorists, perfect information hardly happens in the marketplace, hence a constant risk of information failure.[152] Due to factors discussed in 2.2 above, there is a high degree of information asymmetry in the Nigerian digital market. With caveat emptor allowing e-sellers not to provide adequate information and freedom of contract tying consumers to contractual relationships voluntarily entered into, it becomes tough for Nigerian e-consumers to self-protect or exercise true autonomy as presumed by these contract law principles.[153]

It is no secret that the consumer market has evolved from the old way of contracting. There is a need to balance these contract law principles with legal certainty,[154] and evolved

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[150] Lee Robert G., 'The Contract Formation under the Caveat Emptor Rule: Assessing its Utility' in *Essays in Memory of Professor Jill Poole* (Informa Law from Routledge 2018) 90-105. The Supreme Court of Nigeria has upheld the caveat emptor principle in several sale of goods contracts – See Onyido v. Ajemba (1991) 4 NWLR (Pt. 184) 203, 228. See also Eholor v. Osayande (1992) LPELR-8053(SC)., BFI Group Corporation v. B P E (2012) LPELR-9339(SC). JFS Investment Ltd v. Brawal Line Ltd & Ors (n.39); and Baba v. Nigerian Civil Aviation Training Centre & Anor (1991) LPELR-692(SC).

[151] Perfect information occurs when each participant in a market has complete, up-to-date information about products and prices and can therefore make perfectly rational choices. – See Hastie Reid, and Robyn M. Dawes, *Rational Choice in an Uncertain World: The Psychology of Judgment and Decision Making* (Sage Publications, 2009). P.47- 66

[152] Schwartz and Wilde in a series of their research discussed perfect and imperfect information and their effects on the market and contracting - See: Schwartz A. and Wilde L. L., 'Imperfect Information in Markets for Contract Terms: The Examples of Warranties and Security Interests' [1983] 69(8) Virginia Law Review, pp. 1387-1486; 1420. See also, Schwartz A. and Wilde L. L., 'Imperfect Information, Monopolistic Competition, and Public Policy' [1982] 72(2) American Economic Review, pp. 18-23; and Schwartz A. and Wilde L. L., 'Intervening In Markets on the Basis of Imperfect Information: A Legal and Economic Analysis' [1979] 127(3) University of Pennsylvania Law Review, pp. 630-682; 647.

[153] Chapter three extensively addressed the issue of information failure in the consumer market ensuing as a result of these principles.

[154] Legal certainty 'is a principle of law, which demands for the law to be clear and precise.' - Robert Bradgate, '*Commercial Law'* (3rd Edn, OUP 2003) 5. In Vallejo v Wheeler (1779) 1 Cowp 143, 153 Mansfield LJ

frameworks that address issues in the present market.[155] The evolution of the law on sale of good contracts reveals a pattern of state interventions eroding these old consumer policy principles. Mechanisms such as unfair terms regulations, caveat venditor, the right of cancellation, mandatory pre-contractual information provision rules,[156] etc., are now buffers introduced to prevent and/or correct the adverse effects of caveat emptor. The originating jurisdiction of these principles, the United Kingdom, has introduced changes to soften its hold on consumer contracts. These changes have been both substantive and procedural,[157] with their sole objective being to protect e-consumers and to ensure that consent and autonomy are achieved in their true forms.[158]

However, these principles, as they were in 1900, remain the law in Nigeria, with minimal interference.[159] This minimal interference is not enough to protect Nigerian e-consumers.[160] Presently, Nigerian consumers remain responsible for ensuring the products' suitability for their needs before making purchases.[161] They are only able to pursue action against sellers if active deception, fraud or misrepresentation is detected in the information provided,[162] breach of contract or if the delivered product does not fit the information voluntarily provided

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maintained that *'in all mercantile transactions the great objective should be certainty. And therefore, it is of more consequence that a rule should be certain than whether the rule is established one way or the other: because speculators in trade then know which ground to go upon.*'

[155] Bargaining power is "the ability to secure another's agreement on one's *terms*". See James W Kuhn et al., 'W. Chamberlain: A Retrospective Analysis of His Scholarly Work and Influence' (1983) International Journal of Education and Research 143.

[156] MacQueen Hector, Christian Twigg-Flesner, and Rick Canavan, *Atiyah and Adams' Sale of Goods* (Pearson 2016) 119 – 125. See also Soghoian Christopher, 'Caveat Venditor: Technologically Protected Subsidized Goods and the Customers who Hack Them' [2007] 6 North-Western Journal of Technology and Intellectual Property, 46. And Lefkowitz Louis, 'Consumer Protection Meeting the Challenge' [1968] 4 Portia Law Journal, 67.

[156] Kastle-Lamparter, (n.45) 386.

[157] Substantive measures include but are not limited to mandatory information provision rules, caveat venditor, improving the provisions on implied terms (move from merchantability to satisfactory), restricting unfair and unethical marketing practices, introducing the right of cancellation, etc. Procedural measures include but are not limited to pre-contractual disclosure rules, controlling how information is presented to consumers, particularly in distance and off-premises contracting, etc.

[158] Kastle Lamparter, (n.45) 385.

[159] Ukwueze Festus, 'An Appraisal of Consumer Redress Under the Law of Contract in Nigeria' (2010). 7(1) UNIZIK Law Journal, p.4-8. See also Augustus N., 'Consumer Rights in Democratic System and the Emerging Market in Nigeria' (2018) 6 International Journal on Consumer Law and Practice, 29-40.

[160] Adnan Amirah Madihah, Zamzuri Zakaria, and Norhoneydayatie Abdul Manap., 'Analysis of Caveat Emptor Application in Online Purchases,' [2021] 24 Journal of Legal, Ethical and Regulatory Issues, 1-6, p.2.

[161] Dantata v. Mohammed & Anor (2011) LPELR-9117(CA).

[162] The FCCPA 2018 various provisions on misrepresentation and misleading information, if disclosed by traders. The Act also provided for liabilities and punishments ensuing such practices, especially the effect on the contract-in-issue. - FCCPA, s.116, s.123, s.125 & s.126.

by the seller.[163] Applying these principles without mitigating mechanisms has detrimental effects on e-consumers and would likely lead to ineffective contracts.[164]

2.3.2: E-Consumer Protection in Nigeria.

Nigeria's E-consumer protection laws are primarily focused on preventing fraudulent online activities. This is not surprising, given the prevalence of internet fraud in Nigeria. There are several up-to-date criminal laws regulating fraud in the Nigerian digital market.[165] However, there is a shortage of civil laws in this area, particularly contract law-related matters. A look at recent interventions reveals that Nigerian lawmakers have adopted the technology neutrality approach to regulating the digital market.[166] This approach ensures that laws do not favour or discriminate against a particular technology or way of doing things.[167] The main argument for this approach to regulation is that laws should be drafted in a way that allows them to apply effectively to new ways of doing things (technologies) as they emerge.[168] With this approach, consumer contracts conducted in the Nigerian digital market are treated as just another consumer contract, e-consumers as simply "consumers," and consumer laws are generically introduced to address general consumer issues. Globally, this approach to regulation has been heavily criticised. For example, early deliberations on e-commerce regulation in the European Union saw similar arguments from ministers who at the Bonn

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[163] Eastchase Aluminium Products Ltd v. Ugwu & Anor (2016) LPELR-40936 (CA).

[164] Augustus Nnawulezi Uche, *(n.59)* p.29-40.

[165] These includes but are not limited to Cybercrimes (Prohibition and Prevention) Act, 2015; The Advance Fee Fraud and Other Fraud Related Offences Act 1995; The Criminal Code and the Penal Code of each state; The Economic and Financial Crimes Commission (EFCC) Act of 2004 (as amended), the Miscellaneous Offences Act, 1985, etc.

[166] Ugwu, Chinelo Constance and Ann Ogbo, 'The Implications of Legal and Policy Frameworks for E-commerce in Nigeria.' (2021) 45(2) Bullion, 73-80. See also Akanibo Samuel A., and Tamunoemi Adokiye Abbiyesuku, 'E-Commerce as a Catalyst for Sustainable Growth and Economic Development in the Contemporary Nigeria' (2021) 9(3) International Journal of Business & Law Research, 85-93,

[167] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Towards a new Framework for Electronic Communications Infrastructure and Associated Services* (The 1999 Communications Review COM 1999) p. 14: - 'Technological neutrality means that legislation should define the objectives to be achieved and should neither impose, nor discriminate in favour of, the use of a particular type of technology to achieve those objectives.' For more on technological neutrality as a regulatory approach, please see Bert-Jaap Koops, 'Should ICT Regulation be Technology-Neutral' in Bert-Jaap Koops, Miriam Lips, Corien Prins & Maurice Schellekens (eds), *Starting Points for ICT Regulation: Deconstructing Prevalent Policy One-Liners* (M.C. Asser Press., 2006) 77., and Reed Chris 'Taking Sides on Technology Neutrality', (2007) 4(3) Script-ed 263.

[168] Reed Chris. 'Online and Offline Equivalence: Aspiration and achievement.' (2010) 18(3) International Journal of Law and Information Technology, 248-273, p.248

Ministerial Conference Declaration of 1997 argued that there should be equivalence of legal treatment between online and offline activities, contesting that regulations should be "technology-neutral."[169] However, within three years, the European parliament realised that it is simply inefficient to regulate physical and digital environments in the same way, consequently leading to specific directives regulating transactions conducted in the digital environment.[170]

The problem with this regulatory approach is that it neglects the digital market's peculiarities,[171] the prominence of which is the distance nature and the absence of physical examination of the goods before they are purchased. Online and offline activities are so different that it may be almost impossible to assess the application and outcome of rules on a comparable basis.[172] For example, communication activates the implied term of purpose.[173] However, pre-contractual communication hardly happens in the digital market,[174] therefore, without specific adjustments, this mechanism becomes useless for e-consumers.

Admittedly, e-commerce is a subcategory of trading, and most of the regulatory principles regulating traditional commerce remain relevant for e-commerce regulation. However, the nature of contracting in the digital market makes it impossible to sweep e-commerce under the umbrella of these existing frameworks without causing substantial injustice to e-consumers. The peculiar nature of the digital market questions the effectiveness of existing technology neutral frameworks for e-consumer protection. At this point, examining these peculiarities, their differences and why intervention is needed becomes important.

One of these peculiarities is the absence of the physical proximity of contracting parties. Consumers in the digital market have to rely on visual representation (images and videos) and information to make decisions in the market. While this might not be a problem if these visual

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[169] Principle 22, Ministerial Conference Declaration of 1997. http://europa.eu.int/ISPO/bonn/Min_declaration/i_finalen.html. Accessed 4 April 2024.
[170] Directive 2000/31/EC, Directive 2011/83/EU
[171] Reed (n.68) 252
[172] ibid
[173] Adeola v Henry Stephens and Sons Limited [1975] 7 CCHCJ/1023.
[174] See 4.3

representations are adequate, in several cases in Nigeria's digital market, they are not.[175] The visual representations displayed with products are taken for marketing purposes, therefore, they have been edited and strategically showcased to attract e-consumers. Also, the products used for these visual representations are not the exact products delivered to consumers, rather, they are copies of the product. Regardless of how adequate the visual representations accompanying the products are, it is incomparable to in-person examination and the ability to ask questions from sellers as available in the traditional market. With existing contract law principles such as the caveat emptor placing untoward responsibilities on Nigerian buyers to self-protect and carry out necessary due diligence before making contracting decisions,[176] e-consumers remain at a detriment as the absence of physical examination advantages limits their self-protective abilities, consequently reducing the efficiency of traditional consumer protection frameworks for them.

Nigeria's approach to pre-contractual disclosure is similar to that existing under the pre-1900 English law, i.e., Nigerian sellers were not obligated to provide any information. When they provide, they can provide in whatever manner or form they deem fit, a freedom that is constantly used to manipulate Nigerian e-consumers. With the level of information dependence in the digital market, this approach to pre-contractual disclosure makes it hard for e-consumers to self-protect in comparison to consumers of the traditional market who could clarify doubts in-store and pick up physical warning signals on both the product and purchasing environment.

Another peculiarity is the use of standard-form contracts, an indispensable form of contracting in the digital market.[177] Even though standard form contracts are also used in the traditional market, the position of the Nigerian legal system on proffered communications during negotiations[178] means that traditional consumers are able to negotiate into standard form contracts, specific terms communicated at the negotiation stage, unless expressly

[175] Adebayo A, and Alaba K., 'Electronic Commerce in Nigeria: The Exigency of Combatting Cyber Frauds and Insecurity' [2016] 47 Journal of Policy and Globalization 159.
[176] Animashaun v. Olojo (1990) JELR 42993 (SC).
[177] Becher Shmuel I. 'Behavioural Science and Consumer Standard Form Contracts.' (2007) 68 Louisiana Law Review, 117.
[178] Alhaji Auwalu Bura Hassan V. Godwin Obodoeze & Ors (2012) LCN/5254(CA) 14

rejected by the seller or excluded by law (see the blender example given in 2.2.5).[179] This advantage is not available to e-consumers due to the limited pre-contractual communication opportunities in the digital market. Furthermore, for reasons, including those discussed in 2.2, Nigerian e-consumers hardly read terms and conditions before making purchases,[180] further exposing them to the risk of unfair terms.

Putting this together, it can be seen that the technology neutrality approach to regulation employed by Nigeria lacks efficiency. It is detrimental to sweep electronic and traditional consumers under the same umbrella as it creates an unequal consumer protection atmosphere where e-consumers are less protected. There is a need to introduce laws and mechanisms that either complement existing frameworks by bringing the peculiarities of the digital market within their confines or amend existing frameworks to take care of the digital market's peculiarities.

2.3.2.1: The FCCPA 2018.

The FCCPA 2018 was an overdue intervention into the Nigerian market. Effective in 2019, the Act is the country's first comprehensive consumer protection framework. The preceding framework, the Consumer Protection Council Act of 1991 (CPCA 1991) was an establishing Act that established the Consumer Protection Council (CPC), a body charged with administering consumer protection in Nigeria. One of the shortcomings of the CPCA 1991 is that it contained no specific consumer protection rules; instead, it delegated the making of consumer protection laws to the CPC, who failed to exercise this delegated legislative power throughout its three decades of existence, rather it issued a few suggestions on how consumers can self-protect.[181] These suggestions have no force of law and were blatantly disregarded by sellers. These suggestions were described as "laughable" as by suggesting

[179] For more, see 4.2.

[180] Afolayan, M., and Aladesanmi J., 'Legal Analysis of the Challenges of Unfair Terms and Consumer Protection in Hire Purchase Transactions in Nigeria' [2022) 13(1] Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 70-77. See also Aidonojie Paul Atagamen, Odojor Oyenmwosa Anne, and Odetokun Olukayode Oladele, 'An Empirical Study of the Relevance and Legal Challenges of an E-Contract of Agreement in Nigeria' [2020] 12 Cogito: Multidisciplinary Research Journal, 170.

[181] These include organised shopping, purchasing what is needed, being ethical, thinking independently and respecting the environment.

these practices, the CPC appears to be blaming consumers for their exposure to risks in the marketplace.[182]

At enactment, the FCCPA 2018 was well received by academics who uniformly agreed that it is a significant upgrade on both the CPCA 1991 and the pre-FCCPA consumer protection eras in Nigeria.[183] The FCCPA 2018 combines competition and consumer protection regulations, with Parts XV – XVI covering consumer protection provisions. It repealed the CPCA 1991 and established the Federal Competition and Consumer Protection Commission (FCCPC), a body equipped with both enforcement and delegated legislative powers.[184]

With selected omissions, the consumer protection provisions of the FCCPA 2018 are transplanted from the South African Consumer Protection Act 68 of 2008 (SA-CPA 2008). One of the omissions from the SA-CPA 2008 are e-consumer protection provisions. The SA-CPA 2008 deferred e-consumer protection to the South African Electronic Communications and Transactions Act 25 of 2002 (ECTA 2002). When transplanting into the FCCPA 2018, these deferring provisions were omitted. For example, despite the transplant of the information rules under s.22 of the SA-CPA 2008 into s.114 of the FCCPA, the FCCPA omitted s.23 of the SA-CPA 2008, which provides that the information provision rules under s43 of the ECTA 2002 should regulated e-consumer contracts. For context, s43 of ECTA mandated pre-contractual provision of information to e-consumers. Similar evasion of e-consumer protection-specific

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[182] Ndubisi E, Anyanwu A and Nwankwo, C 'Protecting the Nigerian Consumer: An Expository Examination of the Role of Consumer Protection Council' [2016] 4 (3) International Journal in Management & Social Science, p.529-542.

[183] Eze Uzoamaka Gladys, and Ozioma Mary Ogbonna., 'An Evaluation of the Protection of Nigerian Consumers under the Federal Competition and Consumer Protection Commission Act.' (2021) 3 International Review of Law and Jurisprudence, 13. See also Nigeria: The Rights of a Consumer Under The Federal Competition And Consumer Protection Act Of Nigeria 23 December 2019 < https://www.mondaq.com/nigeria/dodd-frank-consumer-protection-act/877838/the-rights-of-a-consumer-under-the-federal-competition-and-consumer-protection-act-of-nigeria > Accessed 15 July 2023, Simbarashe Tavuyanago, 'The Interface between Competition Law and Consumer Protection Law: An Analysis of the Institutional Framework in the Nigerian Federal Competition and Consumer Protection Act of 2019' (2020) 27(3) South African Journal of International Affairs, 391-411, Adetoro David Oluwadare, 'Highlights of Nigeria's Federal Competition and Consumer Protection Act 2018: An Overview' (2021) 42(6) Business Law Review, 1. Similar academic work can be found in Udoudo Nsongurua Unyime, and Jacob Otu Enyia, 'The Interface between Competition Law and Consumer Protection Law: An Analysis of the Institutional Design for the Enforcement of the Nigerian Federal Competition and Consumer Protection Act, 2018' (2022) 21 Academy of Strategic Management Journal, 1-10 and Irvine Heather, and Luke Myburgh, 'Nigeria's New Federal Competition and Consumer Protection Commission Flexes its Muscles' (2020) 20(8) Without Prejudice, 22-22.

[184] FCCPA 2018, s.17

laws can be found in other parts of the FCCPA.[185] A reasonable conclusion for these omissions could be the existing technology neutrality approach to regulating e-commerce or that the drafters followed the plethora of decisions on extant contract law principles such as caveat emptor, freedom of contract, etc., and excluded provisions that are against these principles.[186] Regardless of these omissions and the opinion of academics on the legislative intention during transplantation, the provisions of the FCCPA 2018, as presently construed, remain the primary e-consumer protection law in Nigeria, therefore its efficiency for e-consumer protection must be examined.

2.4: Conclusion.

This chapter introduced Nigeria's digital market, legal system, approach to consumer protection and the ordinary Nigerian e-consumer. It found that despite the enactment of the FCCPA 2018, the Nigerian legal system continues to adopt the technology neutrality approach to e-consumer protection. It was revealed that this approach is inefficient, consequently leading to consumers exiting the Nigerian digital market. The need for intervention was emphasised. This chapter also informs on the social and legal issues peculiar to the Nigerian environment and Nigerian e-consumer that will be used throughout this thesis when assessing the effectiveness of the FCCPA 2018.

As identified in 2.2, information failure is a key failure in consumer markets, particularly one that relies heavily on information as the digital market. The FCCPA 2018 introduced information rules into the Nigerian consumer policy system. In the next chapter, this thesis will examine these rules to determine their efficiency.

[185] These includes but are not limited to - the SA-CPA 2008's provisions on the right of cancellation and cooling off periods (s.16) which deferred to s.44 of the ECTA and were omitted in s.120 of the FCCPA 2018, b) the provisions of s.33 of the SA-CPA on marketing of goods, s.26 of the SA-CPA 2008 on information provision, s.19 SA-CPA on delivery of goods, etc.

[186] Some of these include mandatory information provision rules, cooling off and cancellation rights, caveat venditor, etc.

CHAPTER THREE.

PRECONTRACTUAL INFORMATION PROVISION AND E-CONSUMER PROTECTION.

3.0: Introduction.

The preceding chapters revealed the situation of the ordinary Nigerian e-consumer. It highlighted how inadequate information provision to e-consumers and e-consumers' struggle to effectively acquire and use information are common failures in the consumer market. It showed that this failure is much direr in the digital market, given e-consumers' increased dependence on information when engaging or self-protecting in the digital market. It also revealed that the risk of information failure is higher with an ordinary Nigerian e-consumer because of certain peculiarities of the Nigerian social and legal environment. It was highlighted that this failure contributes to the unwillingness of Nigerian e-consumers to engage with the digital market, consequently affecting its development.

This chapter will address these information issues. Through principles such as caveat emptor, the Nigerian legal system leaves pre-contractual information provision to the sellers' discretion, this chapter will analyse the effect of this legal approach to determine the extent to which it exposes Nigerian e-consumers to risks. The information regulations under the FCCPA 2018 will also be examined. Recommendations on how to improve information regulations for Nigerian e-consumers' protection will be made. These recommendations will be analysed for efficiency using the cost-benefit analysis model.

3.1: Caveat Emptor and Informed Purchase Decisions.

Chapter two informed this thesis on the caveat emptor's principle within the Nigerian legal system. At its core, the principle is only concerned with the decision made and the events occurring after, which is the obligation of contracting parties to abide by the agreed contract terms. The principle is unconcerned with how informed or uninformed the decision made is. [1] By being unconcerned, it fostered a contracting environment where making informed contracting decisions becomes difficult for contracting parties with less information, which

[1] Ejigini v. Ezenwa & Ors (2003) LPELR-10329(CA).

within this context are Nigerian e-consumers. Given the dynamics of the digital market, B2C e-contracts and the information imbalance in the digital market,[2] this approach to regulating e-contracts is detrimental to e-consumers.[3] This is because it places e-consumers on equal footing with e-sellers. It presumed they have the ability to independently and effectively seek out the information they need to engage with sellers and market activities. However, as examined in 2.2, this is far from the realities of modern-day contracting and of the ordinary Nigerian e-consumer. For e-consumers to be capable contracting parties in the manner theorised by this principle, they need to have equal or close enough access to the relevant information possessed by the seller so that they can make informed purchase decisions (3.2.1 below questions the capability and competence of Nigerian e-consumers to do this).

Making an informed decision means making a decision that shows the knowledge and awareness of the effect and consequence of the decision. It also involves ensuring it aligns with interests at the time of making the decision.[4] Within the context of consumer contracts, making an informed purchase decision involves consumer's ability to decide whether to engage with a market activity (which includes sellers and their products) or not, following an assessment of the relevant pieces of information important to making such a decision. Ensuring that e-consumers are empowered to make informed purchase decisions is crucial to consumer protection and the continuous functioning of the digital market. It gives comfort and assurance to consumers,[5] facilitates effective contracting, increases consumer participation,[6] increases transparency,[7] reduces consumer exposure to harm and, to a certain degree, facilitates consumer autonomy,[8] increases efficacy in consumer contracts, and reduces the risk of market failures.[9] All of these contribute to the development of the market.

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[2] Inegbedion H., Obadiaru D., and Bello V., 'Factors that Influence Consumers' Attitudes Toward Internet Buying in Nigeria.' (2016) 15(4) Journal of Internet Commerce, 353-375.
[3] Ilobinso Ihuoma., 'A Critical Analysis of the Online Consumer's Right to Information in Nigeria' (2022) 4 International Review of Law and Jurisprudence, 89.
[4] Tamar Lakerbaia, 'European Standard for Informed Consumer' (2015) TSU Journal of Law 118.
[5] *ibid*. 120.
[6] Bainbridge S., `Mandatory Disclosure: A Behavioural Analysis' (2000) University of Cincinnati Law Review. 102.
[7] *ibid*. 105.
[8] Howells G., 'The Potential and Limits of Consumer Empowerment by Information. (2005) 32(3) Journal of Law and Society, p. 349-370. Consumer autonomy is increased when their decisions reflect their interests.
[9] Kastle-Lamparter D., 'Pre-Contractual Information Duties' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018) 402.

To attain the above stated advantages in the Nigerian market, e-consumers must be able to efficiently use information in the manner presumed by the caveat emptor principle, which is to have the competence and capabilities to independently acquire and use information to achieve informed decisions. To allow a definite opinion and understanding of the effects of this principle, this thesis will examine the extent to which Nigerian e-consumers have this competence and capabilities in the next sub-chapter.

3.2: Nigerian E-Consumers - Information, Information Use and Informed Decisions.

The importance of information to informed decision-making in the digital market cannot be overstated. Regardless of how it is obtained,[10] in most cases, information is the only assessment tool available for e-consumers to make purchasing decisions and protect themselves.[11] In the digital market, the purchase process and the need for informed decisions start from the moment an e-consumer enters the seller's webpage. It is at this stage that his decision-making process, exposure to risk and self-protection responsibilities starts. Every piece of information encountered, gathered, perused and processed from this point is used to decide whether to purchase the product.

As stated in chapters one and two, under the Nigerian legal system, buyers are solely responsible for obtaining information needed for decision-making. The Supreme Court in regulating sale of goods contracts, supported foundational contract law principles (caveat emptor, freedom of contract and party autonomy). It maintained that buyers who are adults and of free and sound minds should be able and allowed to gather information needed to determine the suitability of a contracting situation for their benefits and/or interests.[12] While this approach might work for B2B contracts, it is problematic for B2C contracts, particularly for consumers. While it is naturally expected that e-sellers would provide information when displaying products for sale, they are usually reluctant to provide information that would

[10] Information can be obtained through seller provision, independent information exploration, consumer experience, word of mouth, etc.
[11] Except in digital content(s) where 'experience' in the form of a 'trial period' is allowed or in sample purchases.
[12] *Onyido v. Ajemba* (1991) 4 NWLR (Pt. 184) 203 at p.228. See also *JFS Investment Ltd v. Brawal Line Ltd & Ors* (2010) LPELR-1610(SC), *Baba v. Nigerian Civil Aviation Training Centre & Anor* (1991) LPELR-692(SC), *Eholor v. Osayande* (1992) LPELR-8053(SC) and *BFI Group Corporation v. B P E* (2012) LPELR-9339(SC).

affect their bottom line – profit making.[13] In most cases where information is provided, e-sellers are focused on distinguishable, and sometimes exaggerated, features that put their products in an advantageous position over similar products in the market[14] rather than the pieces of information needed to help consumers make informed decisions. In some cases, information displayed by e-sellers cannot even be trusted as they are framed in a way that further confuses e-consumers' decision-making by signalling and magnifying e-sellers' preferred information while minimising other information, some of which are relevant for e-consumers informed decision-making.[15] For example, having the product title of a blender (in capital letters and bold fonts) as "multipurpose blender". An e-consumer who purchased but found out that the blender cannot blend Ogbono seeds would not succeed in a claim as all the seller needs to show is that the blender can blend more than one type of seed, therefore qualifying as multipurpose. The natural question that comes to mind is whether it is reasonable to expect an ordinary Nigerian e-consumer to acquire and filter relevant information for self-protection and informed decision-making without detrimental effects on him/her.

3.2.1: Can Nigerian E-Consumers Independently Acquire Information?

As briefly explained in 2.2.1, tasking Nigerian e-consumers with the responsibility of seeking and collecting the information required to self-protect and make informed decisions is a cause for concern. The primary issue here is that – the ability to independently acquire the relevant pieces of information heavily depends, among other things, on their expertise and knowledge. In most cases, Nigerian e-consumers lack the required level of expertise and knowledge, leading to a struggle to definitively know what information they need. Furthermore, due to the infrastructural impediments detailed in 2.2.3, they are usually in a rush when exploring for information, which leads to them frequently missing key information that would have

[13] Howells G, (n.8) p.349.
[14] Krebs J., 'Online Contracting and the Supply of Digital Content to Consumers' (PhD Thesis, Swansea University, 2018). 17.
[15] Mavlanova Tamilla, Raquel Benbunan-Fich, and Marios Koufaris., 'Signaling Theory and Information Asymmetry in Online Commerce.' (2012) 49(5) Information and Management, 240-247.

helped their decision-making. Unfortunately, they are unaware that these pieces of information are missing and are unable to fill gaps they do not know exist.[16]

Independently acquiring information requires information exploration.[17] Information exploration is probing a large amount of information in an unstructured way to uncover initial patterns, characteristics, and points of interest.[18] The information exploration process is very tedious and carries several uncertainties and risks. To successfully explore information, e-consumers have to diagnose (determining what is needed), gather (collecting information from the overwhelming amount of information available on the internet), filter and test (selecting relevant information and dispensing with irrelevant ones), analyse and process the selected information before finally using the processed information to make decisions.[19] As mentioned in 2.2.1, due to the knowledge gap on what is needed or missing, the chances of Nigerian consumers making mistakes at the diagnostic stage are very high, as it is very difficult to take care of the unknown.[20] Any error at any stage would affect the result reached at all the other stages, leading to uninformed decisions. Furthermore, the level of information asymmetry in the consumer market further complicates this information exploration process.[21] All of these cast doubts on the competence of the ordinary Nigerian e-consumer to acquire relevant information independently, at least not to the standard required to self-protect and make informed decisions in the digital market.

Information cost is a key reason why e-consumers in Nigeria struggle to carry out efficient information explorations. Information cost is any cost, quantifiable or not, associated with information exploration and use.[22] Studies have shown that in making decisions, consumers

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[16] Ilobinso (n.3), 89.
[17] Dubitzky W., Kötter T., Schmidt O., and Berthold M.R., 'Towards Creative Information Exploration Based on Koestler's Concept of Bisociation' in Berthold M.R., (eds) *Bisociative Knowledge Discovery. Lecture Notes in Computer Science* (v.7250 Springer, Berlin - Heidelberg: 2012) 11.
[18] ibid 15.
[19] Kingston R., The Social Implications of E-commerce: A Review of Policy and Research (York: Joseph Rowntree Foundation, 2001) 1.
[20] Ilobinso (n.3), 89.
[21] Christozov Dimitar, Stefanka Chukova, and Plamen Mateev., 'A Measure of Risk Caused by Information Asymmetry in E-Commerce.' (2006) 3(1) Issues in Informing Science and Information Technology., 147-157.
[22] For more on information cost, please see - Punj Girish., 'Consumer Decision Making on the Web: A Theoretical Analysis and Research Guidelines.' (2012) 29(10) Psychology and Marketing, 791-803, and Ariely Dan., 'Controlling the Information Flow: Effects on Consumers' Decision Making and Preferences.' (2000) 27(2) Journal of Consumer Research, 233-248.

weigh the information cost needed to make a decision versus the benefit and/or risk associated with the decision.[23] If costs exceed benefits, which is very likely given Nigeria's high information cost issues (as described in 2.2.1), they are more likely to stop the search, exhibit excessive optimism[24] and cost biases, take risks and make uninformed decisions.[25] Furthermore, in a bid to control cost, consumers also exhibit availability bias,[26] where they rely on their immediate opinion and assumption about the product (which can be formed through reviews, signals, framed information, etc.) to make decisions, consequently affecting the quality and effectiveness of their risk assessment exercise. For example, making a decision to purchase based solely on product stars displayed beside the product title (as it takes less information cost) while neglecting caveats and limitations contained in the fine print or further reviews on the product's limitations in the comments. While information costs and related issues are already heightened in e-commerce,[27] they get worse in the Nigerian context.[28] Expecting Nigerian e-consumers to spend more than their daily income on information exploration is simply not feasible.[29] This leads to ineffective contracts and a consequential exit from the market for alternatives. Exit affects market development. Of course, there are information costs in the alternative traditional market, however, a large chunk of the information needed for decision-making in the traditional market is either apparent or easily accessible by asking the salesperson or seller in-store, options that are not readily available in the digital retail market.[30]

With the afore-explained impediments, it remains in doubt whether Nigerian e-consumers are able to independently acquire the information needed for self-protection and informed

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[23] Ramsay I, *Rationales for Intervention in the Consumer Marketplace* (Office of Fair Trading, 1984) Para. 4.5.
[24] Usman Muhammad Umar, and Pawan Kumar., 'Factors Influencing Consumer Intention to Shop Online in Nigeria: A Conceptual Study, (2021) 25(4) Vision, 407-414.
[25] ibid 410.
[26] Availability bias is the human tendency to rely on information that comes readily to mind when evaluating situations or making decisions. – Esgate Anthony and Groome David, *An Introduction to Applied Cognitive Psychology*. (Psychology Press, 2005), 201. For more on availability bias and consumer behaviour, please see - Reisch Luciaa and Zhao Min, 'Behavioural Economics, Consumer Behaviour and Consumer Policy: State of the Art' (2017) 1 Behavioural Public Policy 190; 195.
[27] Grynbaum L, 'Pre-contractual Information Duties: The Foreseeable Failure of Full Harmonisation' in Schulte-Nölke, Hans and Lubos Tichy (eds) *Perspectives for European Consumer Law. Towards a Directive on Consumer Rights and Beyond* (Köln: Verlag, 2010).
[28] See. 2.2.1, 2.2.2 and 2.2.3 for analysis on information cost in Nigeria.
[29] See Chapter *2.2*
[30] see chapter 4.3.

decisions, which is a practical responsibility placed on them as a consequence of the country's legal system's failure to mandate sellers to provide information. Therefore, there is a need to explore ways to assist them in acquiring relevant and efficient information. The European Union and several jurisdictions, like South Africa and the United Kingdom, [31] have addressed this issue by shifting the obligation to acquire information from e-consumers to the party reasonably expected to have it, the e-seller. This regulatory approach mandates e-sellers to provide selected information to e-consumers at the pre-contractual stage (mandatory precontractual information provision rules). As noted by the European Union's Consumer Rights Directive 2011 (CRD 2011),[32] to allow informed purchase decisions, information provision requirements should be mandatory and should be given before purchase contracts bind e-consumers. As currently constituted, such mandatory provision is not in line with the Nigerian contract law system. There is a need for the Nigerian legal system to move away from the existing discretionary disclosure approach to regulation. Unless Nigerian e-consumers' information acquisition and exploration activities are assisted in a way that significantly reduce excessive information costs, self-protection and informed decisions will remain a difficult task. Before examining how this switch in regulatory approach should be done, it is important to understand mandatory pre-contractual information provision in e-consumer contracts, its effects and its importance.

3.3: Mandatory Pre-Contractual Information Provision

Within the context of consumer contracts, mandatory pre-contractual information provision rules are rules compelling sellers to provide relevant and material pieces of information, about the contracting relationship and the product being offered for sale, to consumers prior to the commencement of the purchase contract. By asking the party (e-sellers) with the information to provide it, relevant information is made available to e-consumers, who are now less exposed to the complications and risks associated with information exploration, as discussed in sub-chapter 3.2. This approach to regulation has been a popular global

[31] South Africa with the Electronic Communications and Transactions Act 25 of 2002. The United Kingdom with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the European Union with the Consumer Rights Directive 2011/83/EU.
[32] 2011/83/EU. Recital 34 and recital 35

instrument for tackling information failure in the consumer market.[33] Its preference has been attributed to it being the mechanism with the least interference with the foundational principles of freedom of contract and party autonomy, especially when compared with other consumer policies such as the control of unfair terms, implication of contract terms, the right of cancellation, prohibition of terms, etc.[34] The logic is that even when information is disclosed to consumers, they still need to process and use it for decision-making and self-protection, hence protecting some level of contractual freedom and autonomy.[35]

3.3.1: The FCCPA 2018's Position on Mandatory Information Provision.

Chapter two introduced this thesis to the attitude of the Nigerian legal system on pre-contractual information provision– i.e., there is no general duty to provide information. There are various exceptions to this rule, none covering consumer contracts.[36] By not introducing pre-contractual information provision rules, the FCCPA 2018 maintained the same approach to pre-contractual information provision that existed before its enactment. As long as e-sellers do not lie, knowingly mislead or allow e-consumers to rely on falsehood, they are exempted from liabilities arising from information-related mishaps or e-consumer's inability to self-protect, even if the situation could have been improved with the provision of a piece of information within the seller's knowledge. For example, 6.2.1 revealed that the FCCPA offers limited cancellation rights that allow cancellation before purchased goods are delivered. E-consumers might not be aware of this protection. However, if e-sellers are required to provide this information to e-consumers, e-consumers' self-protection capabilities become increased.[37]

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[33] Grigoleit H., 'The Information Obligations of the Acquis, in Eidenmüller H., Faust F., Grigoleit H., Jansen N., Wagner G., and Zimmermann R., *Towards a Revision of the Consumer Acquis,* (2011) 48 Common Market Law Review, 261. See also Busch C., The Future of Pre-Contractual Information Duties: From Behavioural Insights to Big Data in Twigg-Flesner Christian, (eds.) *Research handbook on EU Consumer and Contract law*. (Edward Elgar Publishing, 2016).

[34] Kastle-Lamparter (n.9) 384.

[35] ibid

[36] Some of these exceptions can be found in privileged contracts (Minors, doctor-patient, vulnerable parties), fiduciary relationships (Director to company - Companies and Allied Matters Act, 2018. s.277.) insurance contracts, partnership contracts, contract for sale of land and *Uberrimae Fidei* contracts. See also Sagay E, *Nigerian Law of Contract* (Spectrum Law Publishing, Ibadan, 1993). 10.

[37] As will be shown in chapter 6.3.6, the United Kingdom and the European Union have similar requirements.

Under the Act, e-sellers are only liable to consumers if fraud or misrepresentations are detected in their dealings.[38] The FCCPA contained various provisions conferring liabilities on e-sellers if they misrepresent or provide misleading information, including the consequence of such misrepresentation on the contract-in-issue.[39] However, these provisions only help if these misleading and misrepresenting elements are found in information provided by e-sellers. Failure to provide does not activate culpability or remedy under the Act. It can be argued that this approach to information regulations discourages e-sellers from actually providing information as this reduces their exposure to the risk of liabilities. Misrepresentation and/or fraud claims are much harder under the Nigerian legal system. An active act of deception is required for successful claims. Innocent or negligent omission would not trigger specific remedies, at best, what is offered is avoidance for mistake.[40] However, this differs to other common law jurisdictions, particularly the United Kingdom, where remedies such as rescission for innocent misrepresentation and damages for negligent misrepresentation exist.[41] In a nutshell, under FCCPA 2018, e-sellers are not legally required to provide any pre-contractual information regarding the goods they sell. E-consumers remain saddled with the responsibility of collecting information needed to fill in any gaps, self-protect and make purchase decisions. This thesis believes that the Nigerian legislators took this approach to preserve the foundational contract law principles in the country, as explained so far in this thesis, this could have adverse effects on consumers.

3.3.2: Should Mandatory Pre-Contractual Provision Rules be Introduced?

Here, the thesis will discuss whether Nigeria should introduce statutory rules requiring the provision of pre-contractual information to e-consumers. To do this, the arguments for and against such rules will be discussed.

3.3.2.1: Arguments for Mandatory Pre-Contractual Information Provision Rules

[38] FCCPA 2018, s.116, s.123, s.125 & s.126.
[39] ibid
[40] Kuforiji & Anor V. V.Y.B. (Nig.) Ltd (1981) LPELR-1716(SC) p.13.
[41] Cartwright, John. *Misrepresentation, Mistake and Non-Disclosure.* (Sweet & Maxwell, 2012)., 4-01

Mandatory pre-contractual information provision rules facilitate e-consumers' informed decision-making. As shown in 3.2.1 and 2.2.1, regardless of the amount of information available online, availability does not always lead to relevancy or adequacy. Nigerian e-consumers have less relevant information than e-sellers.[42] Generally, in the consumer market, there are no sufficient incentives for sellers to volunteer information, therefore, there is a need for legal intervention to mandate provision.[43] When consumers (the party with less relevant information) are assisted in decision-making through information provision, the quality of their purchase decision is improved.[44] Chapter 3.1 explored the concept of informed purchase decisions while chapters 3.2 and 2.2.1 touched on the struggles of Nigerian e-consumers to make informed decisions, struggles that emanated from, societal and infrastructure factors, the consumer and digital literacy limitations of the Nigerian e-consumer, etc. If adequately introduced and mandated, information provision rules would reduce the effects of these impediments by bringing relevant information right to e-consumers and ensuring that goods and purchase contracts are more likely to align with realistic e-consumer expectations.[45] The question that might arise is, why can't consumers gather this relevant information by themselves? 3.4.1 answers this question by highlighting information cost and literacy issues as the primary reasons. The limitation in their exploration capabilities and their unwillingness to expend high cost to correct it justifies the need to mandate the provision of information to them. Despite the above justifications, it is important to mention that mandatory information provision rules do not remove information costs, it only reduce it. Regardless of mandatory information rules' effectiveness, e-consumers still have to incur information costs in using them and clarifying doubts through independent research, when needed. However, with the mandatory information rules, these costs are significantly reduced.

Mandatory information provision rules also assist in the effectiveness of other consumer protection mechanisms. Chapter four will show that mandatory pre-contractual information provision rules help with the efficacy of the implied term of description, the same with

[42] Ilobinso (n.3), 89.
[43] Howells (n.13), 355
[44] Kastle-Lamparter (n.9), 402
[45] Howells (n.13), 355

chapter five on the effectiveness of unfair terms rules as contained in the FCCPA, and chapter six on the right of cancellation.

Mandating pre-contractual information provision also reduces the risk of the market for lemons market failure, which primarily ensues from informational imbalance.[46] It has been firmly established by economic intervention theorists, as examined in chapter one, that markets are generally not efficient enough (as there are no perfect market situations) to independently regulate information asymmetry therefore, intervention is needed.[47] Akerlof's market for lemons' market failure theory maintains that when buyers lack material information about the quality of the offers (which includes the condition for contracting), it becomes difficult to differentiate good and bad offers, leading to price being the central determinant of their market decision. This will result in a market with worse offers, low consumer trust and a market failure.[48] Several empirical evidence reveal that Nigerian consumers seldom use price as a criterion for decision-making in the marketplace. Expensive products are seen as being of higher quality than less expensive ones, unknown to them, these products are expensive not because they are of better quality, but because they are imported and not locally produced.[49] Rather than seeking the relevant information to determine quality, they use price as the quality signal and decision-making criterion. This often leads to worse offers in the market, as local sellers might become incentivised to hike their prices to signal quality.[50] Mandating the provision of information will make it easier for consumers to assess quality, thus reducing the risk of the lemon market failure.

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[46] Akerlof G, 'The Market for "Lemons: Quality Uncertainty and the Market Mechanism,' [1970] 84(3) The Quarterly Journal of Economics, Oxford University Press, 488-500.

[47] Ramsay I., 'Rationales for intervention in the Consumer Marketplace' (London, Office of Fair Trading 1984) cited in Ramsay I, Consumer Law and Policy (3rd Edn, Hart Publishing 2012) 47.

[48] Akerlof (n.46) 488.

[49] Okechuku Chike and Vincent Onyemah. 'Nigerian Consumer Attitudes Toward Foreign and Domestic Products.' (1999) 30 Journal of International Business Studies; 611-622.. See also Obih Uchenna, and Lloyd S. Baiyegunhi. 'Willingness to Pay and Preference for Imported Rice Brands in Nigeria: Do Price–Quality Differentials Explain Consumers' Inertia?.' (2017) 20(1) South African Journal of Economic and Management Sciences, 1-11.

[50] ibid

Furthermore, mandatory information provision rules improve market transparency and consumer participation.[51] With these rules, sellers are compelled to be transparent with information regardless of whether they prefer to disclose it or not, or whether it hurts their profit-making bottom line or not. For example, the Federal Ministry of Health (FMH) mandated cigarette and tobacco companies to display the phrase "the Federal Ministry of Health warns that cigarette smokers are liable to die young." on all their product listings, the product itself and all advertising materials.[52] Even though this might hurt the e-seller profit bottom line, this provision remains mandated. With this, consumers of tobacco products become more informed about the negative consequences of consuming tobacco products.

Despite the advantages mentioned above, it is important to note that this increase in information can be used by e-sellers to control consumer choice. Through a practice known as framing, e-sellers are able to use information provision to nudge e-consumers towards a decision.[53] Unless adequately introduced and monitored, information provision rules can be employed as an instrument to manipulate consumer decision-making. For example, providing excessive product information, with complex words, knowing fully well e-consumers' attitude to information overload and that Nigerian e-consumers would not be willing to expend the cost needed to read and understand the excessive product information and accompanying complex words. Regardless of this risk, this thesis remains convinced that mandatory information provision rules remain necessary for e-consumer protection in Nigeria as the aforementioned risk can be managed if regulators, as recommended in 3.4, take a hands-on approach when introducing these rules. There is a need to ensure there is no room for e-sellers manipulation.

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[51] Jarvenpaa S., Tractinsky N., and Vitale M., 'Consumer Trust in an Internet Store' (2000) 1 Information Technology and Management, 45-71. See also, Suk-Joo Lee, Cheolhwi Ahn, Kelly Minjung Song and Hyunchul Ahn, 'Trust and Distrust in E-Commerce,' (2018) 10(4) Sustainability, Multidisciplinary Digital Publishing Institute, Open Access Journal 1-19.

[52] This is in fulfilment to its obligations under the WHO Framework Convention on Tobacco Control (FCTC) of June 2004

[53] Biswas Dipayan, "The Effects of Option Framing on Consumer Choices: Making Decisions in Rational Versus Experiential Processing Modes' (2009) 8 (5)Journal of Consumer Behaviour: An International Research Review, 284-299.

Finally, information provision rules enable fair content of consumer contracts and improve the quality of consumer consent in their contracts.[54] Mandatory information provision rules rebalance the information imbalance in the marketplace, when the excessiveness of the contracting power of a party is reduced, contractual fairness is improved.[55] Several jurisdictions have used the fairness justification to argue for information provision rules. The French jurisdiction has linked disclosure duties as a facilitator for private autonomy to contract and create a fair contractual relationship.[56] Germany also linked mutual consent to contract achieved through transparency and provision as a proxy to contractual fairness.[57] Mandatory information provision rules enable a fair content of the purchase contract and facilitate 'true' freedom of contract and party autonomy. When consumers have the information needed to contract, they can exercise their freedom and autonomy in an optimal manner, allowing for fairer contracting relationships.[58]

3.3.2.2: Arguments Against Mandatory Pre-Contractual Information Provision Rules

Despite the various justifications for pre-contractual information provision rules, there are arguments against its introduction as a consumer protection mechanism. The leading criticisms revolve around paternalism,[59] and interference with consumer's contractual autonomy.[60] These critics argue that contracting parties should be responsible for their own interests without regulators' interference. Sunstein and Thaler took this argument further by stating that information provision rules could harm consumer autonomy as mandatory provision rules may be used as a tool by the government to distort and influence consumer choices by directing them towards outcomes and choices that the state desires.[61] With these

[54] Grundmann Stefan, 'Information, Party Autonomy and Economic Agents in European Contract Law' (2002) 39(2) Common Market Law Review, 280

[55] Heiderhoff B., 'Information as a Means of Consumer protection in European Consumer Contract Law—A History of Pyrrhic Victories' (2010) 2 Silesian Journal of Legal Studies, 26–44.

[56] Collins H., 'Disclosure of Information and Welfarism', in Brownsword R., Howells G., and Wilhelmsson T., (eds), *Welfarism in Contract Law* (Dartmouth Publishing Co Ltd:1994) 97–126, 117–23.

[57] M Wolf, Legal Freedom to Make Decisions and Contractual Reconciliation of Interests (1970) 74.

[58] Kastle Lamparter (n.9), 403

[59] Sunstein C. and Thaler R., 'Libertarian Paternalism is not an Oxymoron' (2003) 70 University of Chicago Law Review, 1159.

[60] Grundmann (n.54) 283

[61] Sunstein and Thaler (n.59) 1159

rules and the information cost discussed so far in this thesis, there is a risk that consumers would stay within the confines of the information provided by sellers without further exploration. With this, what consumers believe they want may be distorted by their imperfect ability to evaluate their choices outside the scope of the information provided to them.

Despite the merits of this argument, this thesis questions whether the consumer autonomy these critics seek to desperately protect can be achieved when consumers lack the information needed to exercise the said autonomy. In fact, it has been argued that information provision rules promote consumer autonomy both on the micro and macro levels. The micro level is the ability of the individual party to make a well-founded contractual decision, and the macro being that the micro-individual ability leads to more rational market behaviour, which improves transparency and efficiency in the market as a whole.[62] Furthermore, the concept of freedom of contract, which the consumer contracting autonomy argument stems from,[63] operates on the theoretical belief that contracting parties are on equal footing and are able to self-protect their interests,[64] which is not the reality of B2C e-contracts.[65] Mandating precontractual information provision might help rebalance this unequal footing, by requiring the party with information to provide to the other party so that the unequal scale can be further titled toward equality and fairness.

Another criticism of mandatory information provision is that most consumers do not use information. E-consumers have lives to live, are busy, and have other life events outside consumption. Therefore, the efforts and costs made to inform them could be wasted because evidence from developed jurisdictions with information provision rules reveals that only a few consumers actually use information provided to them.[66] Some consumers are simply

[62] Kastle Lamparter (n.9), 385.
[63] C. Sunstein and R. Thaler, (n.59) 1159.
[64] Lignes Aeriennes Congolaises v. Air Atlantic Nigeria Ltd (2005) LPELR 5808 (CA).
[65] Alimi-Memedi Shpresa. 'Consumer Protection and Freedom of Contract in The Directive 93/13/ECC On Unfair Terms In Consumer Contracts.' (2018) 6(9) JUSTICIA International Journal of Legal Sciences, 95-113.
[66] Bainbridge, (n.6) 102. See also Viscusi K., 'Individual Rationality, Hazard Warnings and the Foundations of Tort Law' (1996) 48 Rutgers Law Rev. 625, at 661—5. A research by the University of law, England found that more than two thirds of respondents (68%) either don't read or don't understand contracts they sign for subscriptions or utilities, 55% of the group that read the terms also admitted to not always comprehending the terms they were agreeing to. Also, one in every ten (13%) admitted to hardly or never reading their contracts at all – The University of Law, 'More than Two Thirds of People don't Read or Understand their Contracts' <

unwilling to exert any cost, rather, they rely on other substantive protection mechanisms, such as the implied terms, the right of cancellation, statutory warranties, etc., for their protection.[67] These findings have led to critics arguing for these alternative mechanisms[68] rather than information provision rules. However, these criticisms neglect the fact that the advantages of information provision rules exceed helping consumers make informed decisions. As stated above, information provision rules improve the efficacy of these other protective mechanisms. When rightly used, mandatory information provisions rules can be a tool to bring these alternative mechanisms to consumers' attention. For example, the UK mandates sellers to inform e-consumers of their statutory right to cancel.[69] As will be seen in chapters four and five, adequate information rules also help improve the effectiveness of the implied terms and the unfair terms rules. Furthermore, not all e-consumers will fail to use information, those who use information adequately will make informed decisions and not have to seek remedies in the future, consequently improving market reputation, reducing inefficient contracts in the market and reducing the workload on the redress system, which includes these alternative mechanisms.

As pointed out by one of the critics, Howells, information provision rules need to remain the central plank of consumer protection. It is only important that it is not the only plank.[70] This thesis agrees with his submission. By putting information provision rules as the foundation, e-consumers are empowered, some of them will make better purchase decisions, and for reasons that might be intentional or not, some will not. Alternative mechanisms should be put in place for the group that does not. Admittedly, there are merits to the arguments against mandatory information provision rules. However, as shown, the benefits of mandating information provision trump the negatives, hence the justification for intervention.

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https://www.law.ac.uk/about/press-releases/more-than-two-thirds-of-people-dont-read-their-contracts/ > Accessed 26 November 2023.

[67] Ariely Dan, 'Controlling the Information Flow: Effects on Consumers' Decision Making and Preferences.' (2000) 27(2) Journal of Consumer Research, 233-248.

[68] Howells (n.13) 364. See also C. Sunstein and R. Thaler, (n.59) 1159.

[69] CCR 2013, Part 2, Schedule 2(I)

[70] Howells (n.13) 356

3.4: Reforming Nigerian Law to Require Pre-Contractual Information Provision to E-Consumers.

Having established why e-sellers should be required to disclose information regarding the goods they sell at the pre-contract stage, this thesis will now look at how Nigerian law could be reformed to implement this recommendation. This subchapter will also discuss those pieces of information e-sellers should be required to disclose. It is important to mention that this thesis does not aim to take care of the individual information needs of every consumer, as this would be impossible given the number of variables tied to individual e-consumer's needs and the different types of consumer goods available in the digital market. The aim is to introduce mandatory information provision rules that protect the ordinary Nigerian e-consumer.[71] The recommendations here will continue to use the ordinary consumer standard of the FCCPA 2018. As will be shown in 3.5.1, this standard provides adequate protection for Nigerian as it takes into consideration the average literacy level in the country, consumer experience and products-in-issue, thus offering a balance between consumer protection and the realities of the marketplace.[72]

In making these assessments and recommendations, this chapter will learn a lot from the jurisdictions identified in chapter one. Starting with a common law jurisdiction that have also mandated pre-contractual information provision, the United Kingdom and an African jurisdiction where the FCCPA 2018 was transplanted from, South Africa. Recommendations here will learn primarily from the mandatory information provision rules of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR 2013) and South Africa's Electronic Communications and Transactions Act 25 of 2002 (ECTA 2002). The justifications for selecting these jurisdictions are apparent from the examination done so far in this thesis. Before introducing information provision rules, these jurisdictions had the same legal approach to pre-contractual information provision as Nigeria. However, both have

[71] The FCCPA's regulatory standard dis that of an ordinary consumer. concept of an ordinary consumer as defined by the FCCPA 2018 is similar to has been used by various jurisdictions in introducing consumer policies. The ordinary consumer concept is defined below in s.114(1) as someone with average literacy skills and minimal experience as a consumer of the relevant goods or services and could be expected to understand the content, significance, and import of the description provided without undue effort

[72] See chapter 3.5.1 below for analyses on the Ordinary Consumer standard of the FCCPA 2018

mandated information provision rules for e-consumer contracts for over a decade, and available research revealed that despite some challenges, the quality of consumers' decisions and consumer protection, in the digital market of these jurisdictions, have improved since the introduction and empowered consumers have been created.[73]

In the United Kingdom Department of Business, Energy and Industrial Strategy (BEIS)'s first five-year review of the implementation and effect of the CCR 2013 (the regulation that mandated pre-contractual information provision into the UK),[74] it was empirically gathered that pre-contractual provision of information has improved consumer confidence in the country. Respondents to the survey noted that pre-contractual information provision rules under the CCR 2013 have enhanced consumer confidence, created wider awareness, improved consumer education and enforcement of consumer laws. Majority of the respondents also noted that it brings some level of balance to the market as consumers do not feel like they are purchasing in the dark or being manipulated to purchase.[75]

Furthermore, this thesis will learn from the European Union, particularly its Consumer Rights Directive of 2011 (CRD 2011).[76] The justification for this is that the United Kingdom information provision rules as contained in CCR 2013 were domesticated from the CRD 2011. Examining the European Union's CRD 2011 will give a much-needed background to the provisions of the CCR 2013. Finally, consideration will also be given to two relevant international treaties and model laws - the Commonwealth Model Law on Electronic Transactions (CMLET 2017),[77] and the United Nations Guidelines for Consumer Protection

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[73] For South Africa, see - Jacobs Wenette, 'The Electronic Communications and Transactions Act: Consumer Protection and Internet Contracts.' (2004) 16(4) SA Mercantile Law Journal, p.556-567. For the United Kingdom, see Giliker Paula. 'The Consumer Rights Act 2015 – a Bastion of European Consumer Rights?' (2017) 37(1) Legal Studies, 78-102. See also Luzak Joasia., 'Online Disclosure Rules of the Consumer Rights Directive: Protecting Passive or Active Consumers.' (2015) 4 Journal of European Consumer and Market Law, 79.

[74] Department of Business, Energy and Industrial Strategy, 'The Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 Accessed at https://www.gov.uk/government/publications/statutory-report-on-the-implementation-of-the-consumer-contracts-regulations-2013 on 12 November 2023

[75] Ibid p.7

[76] SI 2013/3134

[77] The Commonwealth Model Law on Electronic Transactions (2017) https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key_reform_pdfs/P15370_8_ROL_Model_Law_Electronic_Transactions.pdf accessed 26 March 2024.

(UNGCP 2016).[78] This is because Nigeria is a commonwealth nation and was one of the countries that approved introducing this model law in 2002 at the Commonwealth Law Ministers and Senior Officials meeting.[79] Nigeria is also a signatory to the United Nations treaty and a member of both the United Nations Conference on Trade and Development and the Trade and Development Board, which were instrumental in drafting the UNGCP 2016. It remains unclear why, despite being part of the members of these bodies, the FCCPA 2018 did not incorporate the provisions or recommendations of the UNGCP 2016 or the CMLET 2017, even though the Act was introduced years after the model frameworks. This thesis will remind Nigerian legislators of these recommendations by integrating them into this sub-chapter.

It is important to mention that the recommendations herein are made solely for e-contracts. The reason for this isolation can be traced to the earlier discussions on the importance of information to e-consumer protection and decision-making. This thesis is in no way trivialising the importance of information provision to traditional consumers, however they are not the focus of this thesis. At this point, the chapter recommends the pieces of information whose provision should be mandated.

3.4.1: Information to be Provided.

This subchapter will recommend pieces of information whose provision should be mandated. As stated earlier, inspiration will be taken from the mandatory pre-contractual information provision rules of the South African ECTA 2002, the United Kingdom's CCR 2013, the Commonwealth CMLET 2017 and the UNGCP 2016. The recommendation here will take a more structural approach than those taken under the aforementioned laws. The CCR 2013 mandated the provision of 22 pieces of information, and the ECTA 2002 mandated 20 pieces of information. One of the criticisms of the CCR 2013 is the lengthy and detailed nature of the information provision rules and how it has contributed to consumers' struggle to easily

[78] United Nations Conference on Trade and Development, 'United Nations Guidelines for Consumer Protection' (2016 New York and Geneva) https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf Accessed 31 March 2024.
[79] Commonwealth '2002 Meeting of Commonwealth Law Ministers and Senior Officials: Kingstown, St Vincent and the Grenadines, 18–21 November 2002' https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/view/776/776/6053 accessed 26 March 2024.

understand or identify what each information item relates to.[80] Therefore, in making its recommendations, this thesis will bundle information under different categories to address this criticism and make the regulation easier for Nigerian e-consumers to understand and use.

3.4.1.1: Seller Identity and Contact Information

Information provision rules should mandate e-sellers to provide information on their identity.[81] This should include trading name, registered physical address, trading number, contact information (a working and attended email address, phone number and website contact form), and professional or union membership details, where applicable.[82]

The exposure of Nigerian e-consumers to fraud and deceptive practices makes providing this category of information important. Mandating its provision allows e-consumers a better view of e-sellers' legitimacy and helps them decide whether to engage with an e-seller or not. When information on e-sellers' identities are missing or does not correlate to public registrars such as the Companies Affairs Commission's database, etc. E-consumers are cognitively warned and are able to walk away from such e-sellers. Furthermore, mandating the provision of information like company registration numbers gives them the advantage of searching the free database of the Corporate Affairs Commission and the respective state inland revenue board to verify the e-seller's identity and self-protect as needed. Identity information assists in dispute resolution and redress enforcement processes.[83] When identity is known, e-consumers are able to easily identify and contact erring sellers to enforce or request the enforcement of their statutory and legal rights or remedies, as applicable. The UNGCP 2016 also echoed that identity information helps law enforcement agencies to trace and locate

[80] Department of Business, Energy and Industrial Strategy, 'The Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013' page 12 – The report found that "… a typical comment was that Schedule 2 was detailed, lengthy and complex but included everything that was required by a consumer. However, there was a view that consumers might need help identifying the key pieces of information for them. There was a suggestion that grouping the information in a standard format might help consumers to use and navigate the information better."

[81] Similar requirements were made by the CCR 2013, Sch.2(b). See also, the CRD 2011, Art 6(1)(b) and the CMLET 2017, Art.24(1)

[82] ECTA 2002 in its identity information included the requirement to provide information on e-sellers' professional affiliation and subscribed code and conducts. – ECTA 2002 43(1)(d) and (e).

[83] The CMLET 2017 also echoed that identity information is needed and should be provided to allow the service of legal proceedings – CMLET 2007, Art. 24(1)(c).

both legitimate and fraudulent traders, consequently improving the ability to enforce consumer protection mechanisms and fish out erring traders.[84]

3.4.1.2 Main characteristics of the product.

Information provision rules under this category should include a detailed and relevant description of the product being offered for sale and its characteristics.[85]

Provision of this information is key as it becomes a condition of the contract after the contract is created. This is because, as will be shown in chapter four, information identifying the purchased goods are descriptions,[86] and descriptions are conditions of the contract.[87] However, the dilemma with this information provision rule is the uncertainties surrounding how to determine "main characteristics".

Commenting on the CRD 2011, several authors have dabbled back and forth on how to determine what qualifies as "main characteristics," with none of them being able to agree on a definite test.[88] They all concluded that this standard is relative and should be limited to the core elements of the subject matter of the contract, which should be determined using the complexity of the goods and the nature of contracting (with a higher standard needed in the digital market given the inability to physically examine).[89] The only clear guideline discovered through research is that of the European Commission, which provides that all product characteristics that an average consumer will not normally expect from the product in issue as an example of what qualifies as "main characteristics."[90] However, this only offers an example of what qualifies as "main characteristics," it does not solve the dilemma here.

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[84] UNGCP 2016, Art.14(b)
[85] Similar requirements were made by the CCR 2013, Sch.2(a), CRD 2011, Art 6(1)(a), ECTA 2002, s.43(1)(h), and the CMLET 2017, Art 24(2).
[86] T.E Demuren v Atlas Nigeria Limited (1976)12 CCHJ 2709.
[87] ibid
[88] Kastle Lamparter (n.9) 434 and S Grundmann S., 'The EU Consumer Rights Directive, (2013) 68 JuristenZeitung 53–65, 57
[89] ibid
[90] European Commission, 'Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(04) accessed 26 March 2024 at paras. 3.2.1

Furthermore, this issue resurfaced in the UK's fifth-year review of the CCR 2013, where sellers sought the Department for Business, Energy and Industrial Strategy's guidance on how to determine "main characteristics". However, the Department of Business, Energy and Industrial Strategy concluded that complying with this standard should be left to the discretion of the seller who is to exercise this discretion in a manner appropriate to the medium of contracting and the goods.[91] While this thesis has its concerns about allowing e-sellers to determine "main characteristics", it sees no other viable option, as it is not unreasonable to expect sellers to know what they are selling. While there is a risk for abuse, the large variety of goods transacted in the digital market makes it impossible to proffer a definite guideline as what is "main" will always be different, therefore, reliance on the veracity of the e-seller remains indispensable. This is one of the limitations of information provision rules that necessitates the need for alternative mechanisms, such as the right of cancellation, as recommended in chapter six of this thesis and the implied term of purpose and quality as discussed in chapter four.

Despite this gap, this information item cannot be dispensed with as e-consumers need to be informed on the characteristics of what they are contracting for. Increased control can be introduced through specific guidelines such as – complex products requiring a higher level of detail, technical devices needing manufacturer information and product class/type, core product information such as size, weight, limitations, specifications etc., information reasonably expected from the goods-in-issue (such as if a PlayStation console is only digital or accepts physical discs), etc. Provision should be made in a way that allows the ordinary e-consumer of the subject matter of the contract to understand the product being offered for sale. The plain and understandable language requirement under s.114 of the FCCPA 2018, as examined under 3.5 below, must be strictly adhered to with this information item. E-sellers should ensure that complex product information are simplified to the level understandable by the ordinary Nigerian e-consumer of the product-in-issue. The European Commission took a similar view when commenting on this requirement under the CRD 2011, it maintained that

[91] Department of Business, Energy and Industrial Strategy, 'The Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013'(n.74) p.14

the complexity of a product should play a part in determining what should be provided under the main characteristics requirement and what should not.[92]

Regardless of the uncertainties surrounding main characteristics, a common theme found in some of the frameworks guiding the recommendation in this subchapter (the CRD 2011, the ECTA 2002 and the CMLET 2017) is that, in complying with pre-contractual information provision rules, e-sellers should provide in a way that allows ordinary e-consumers of any goods in issue to make informed decisions about goods. The ECTA 2002 and CMLET 2017 expressly included this requirement in their respective frameworks,[93] while the European Commission's guidance document on the CRD 2013 also echoed this objective.[94] Therefore, in introducing this information rule, this thesis recommends that Nigerian lawmakers expressly include this objective in the statute as done by both the CMLET 2017 or the ECTA 2002. This will help resolve some of the uncertainties with the main characteristics requirement because the court will be able to consider whether the information provided or omitted, as the case maybe, is what ordinary e-consumer of the product would require to make informed decisions on the product in issue. Finally, chapter four will show that mandating the provision of this category of information would increase the efficiency of the FCCPA 2018's implied terms of description, purpose and quality for e-consumer protection in Nigeria. Furthermore, disclosing this information further saves information and transaction costs as it discourages the conclusion of the contract rather than pursuing remedies and redress after entering into an inefficient contract.[95]

3.4.1.3 Price, charges and payment arrangements

This category of information provisions rules should mandate the provision of information on the total price of the product. When the price cannot be determined at the time of provision, information on how the price is to be calculated must be disclosed. Other payment

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[92] ibid

[93] ECTA 2002, s.43(1)(h), and the CMLET 2017, Art 24(2).

[94] European Commission, 'Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(04) accessed 26 March 2024. at 3.2.1

[95] Eidenmüller H., 'Cancellation Rights', in Eidenmüller H., Faust F., Grigoleit H., Jansen N., Wagner G., and Zimmermann R., *Towards a Revision of the Consumer Acquis*, (2011) 48 Common Market Law Review, 109–65, 161.

information such as taxes, delivery fees, ancillary fees, manner of payment, additional purchase options, and all applicable arrangement for payment should also be disclosed. [96]

Transparency of prices and charges increases consumer confidence.[97] Mandatory pre-contractual information provisions rules on price have had immense effects on consumers in the UK. The fifth-year review of the CCR 2013 found that consumers have been able to properly assess costs and make better decisions because of this requirement. It was also found that since enactment, there has been a significant reduction in complaints about hidden costs and post-contract discovery of additional payment obligations.[98] Some Nigerian e-sellers display net prices with hidden miscellaneous costs, such as taxes, customs fees, etc., reserved for the checkout page.[99] Several e-sellers simply include gross prices without a breakdown of what the labelled price includes at checkout. It is important that e-consumers are provided with the product price, including taxes and other incidental costs, as early as possible in the contracting process. In cases where these ancillary fees are not easily determined, there should be a caveat warning e-consumers that such charges exist and the point where they will be informed of such charges and how those charges will be calculated. Delivery charges should be replicated at the checkout page to ensure that e-consumers have access to it at the time of making their delivery decision. E-consumers must be protected from incurring disguised payment obligations by mandating sellers to ensure that consumers understand when the obligation to pay is activated, e.g., mandating the labelling of a button with an unambiguous word that states "**complete order" or "purchase".** Adequate provision of payment information is key in every consumer market. Mandating adequate provision of this information increases the chances of informed decisions.

3.4.1.3 Delivery information

[96] Similar requirements are contained individually or collectively in the CCR 2013, Sch.2(f-i), CRD 2011, Art 6(1)(e), ECTA 2002, s.43(1) (i-k), and the CMLET 2017, Art 24(3).
[97] Grigoleit H., (n.33), 1077–123.
[98] Department of Business, Energy and Industrial Strategy, 'The Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013' (n.74) p.18
[99] Ilobinso (n.3), 89

This category of information provisions rules should mandate the provision of information on delivery details, timeline, options and associated costs.[100]

Other than in a few cases where click and collect are employed, contracts concluded in the digital market usually require delivery services. Delivery information is key to e-consumer's decision to engage in a transaction or not. Consumers should be informed when delivery will take place to allow them make arrangements for receipt or decide the fitness of the delivery timelines for their needs.

3.4.1.4 Dispute resolution and complaint handling information

This category of information provisions rules should mandate the provision of information on how complaints and disputes can be communicated to e-sellers, e-sellers' complaint and dispute resolution process, response timelines, and complaint team availability hours.[101] Any alternative dispute resolution scheme to which the seller is subscribed, if applicable, and the guidelines to the scheme.

Chapter 2.2.6 examined the access to justice issues in Nigeria and the difficulties of e-consumers in resolving disputes with sellers. Mandating the provision of this information would inform e-consumers of the various ways in which sellers handle disputes. Inadequate complaint-handling processes and complicated dispute-resolution avenues would send a warning signal to e-customers, allowing them to assess the risk of engaging with such seller and informing their decision-making process.

3.4.2: Remedies for Breach of Information Provision Obligations.

Intervention mechanisms' effectiveness is heavily tied to compliance and enforcement, and compliance is usually facilitated with strict consequences for non-compliance. To ensure that e-sellers adhere to the afore-recommended information provision obligations, they must be accompanied by penalties for non-compliance and statutory remedies that are easily exercisable by consumers. With penalties, the FCCPA 2018 already introduced fines for non-compliance with the provision of the Act.[102] This will be extended to information provision

[100] Similar requirements are in the CCR 2013, Sch.2(j), CRD 2011, Art 6(1) (g and l), and ECTA 2002, s.43(1)(l).
[101] Similar requirements are in the CCR 2013, Sch.2(k), CRD 2011, Art 6(1)(g), and ECTA 2002, s.43(1)(o).
[102] FCCPA 2018, s.159

rules if introduced into the Act. On consumer remedies, inaccurate provision would lead to remedies under misrepresentation, mistake or fraud. However, that is not the concern here. The concern here is exclusive to e-sellers' non-adherence to mandatory information provision rules, as recommended.

A suitable remedy would be one similar to the remedy for breach of information provisions rules under the ECTA 2002[103] which is to equip consumers with the unilateral right to cancel the contract. This thesis recommends that when Nigerian e-sellers fail to provide the recommended mandatory pieces of information before the conclusion of the contract, the consumer should be allowed to cancel the contract within a period of time determined based on how easy it is to detect the missing information and calculated from the delivery date, where applicable. This would be covered in detail under the right of cancellation discussed in chapter six. However, there is a need to extend the scope of this right of cancellation when the reason for cancellation is the breach of information duties. In such case, the cancellation period should be extended to cover such time that the e-consumer would have been reasonably expected to discover the missing information or the effect of the missing information. Furthermore, unlike the recommendations made in chapter six, where cancellation of the contract ends the grievance, consumers who have to cancel for breach of information provision duties should be entitled to damages. A formula for calculating general damages may be introduced with specific damages left to the circumstances surrounding the case-in-issue, particularly the damages caused by the failure to disclose the mandated information.

In some cases, cancelling the contract might not be optimal for a consumer with ancillary costs, commitments and/or obligations tied to the contract-in-issue. For example, it will not be optimal to cancel the purchase of a gaming PC delivered in parts on a tournament day. If on delivery, the e-consumer was informed that there would be associated assembly costs, information not provided to the consumer before purchase. In this case, a suitable remedy would be one that alters the contract in a way that the undisclosed requirement to pay assembly costs is expunged from the contract, consequently removing the e-consumers'

[103] ECTA 2002, s.43.

obligation to pay the assembly cost while mandating the seller to assemble the gaming PC at no cost. However, in certain cases, expunging a term might affect the contract's validity as such term is an *essentialia negotti* (essential information) of the contract, reasonable terms may be implied to correct or complete the missing information.[104] This right of implication by interpreting authorities should be exercised judiciously and meticulously to reduce possible abuse, the extent to which contractual freedom is interfered with, and the risk of paternalism to the barest minimum. Reasonable options might be to look at market practices, trade customs for the goods in issue, and other relevant terms of the contract to determine the suitable term to imply into the contract. Regardless of the methodology used, the term implied into the contract must protect the e-consumer and should be one that the e-consumer agrees to.

One concern that surfaced is the issue of the *nemo quod non-habet* defence. Translating to "no one can give what they do not have," this is a defence commonly used by contracting parties being sued for non-compliance with disclosure obligations in Nigeria.[105] This defence is premised on claims that they do not have the information required to be disclosed, therefore, they cannot disclose what they are unaware of. This defence will be detrimental to the effectiveness of any recommended information provision rule as many e-sellers are retailers and are not usually the manufacturers of the products they sell. With this, e-sellers can use the *nemo quod non habet* defense as justification for non-compliance with the introduced information provision rules. It would be hard for consumers to show that these retailers have the information not provided, hence the need for attention here. For example, retail e-sellers may argue that disclosing certain information on delivery arrangements is impossible because the information is with the delivery partner, and they do not have access to it. To prevent this, strict liability, just as obtainable with implied terms and product liability rules in Nigeria, should be applied when introducing the aforementioned mandatory provision rules. This will reduce the potency of this defence. In this case, e-consumers would

[104] Wilhelmsson elaborated on the Acquis Principles (2:208)'s suggestions on implication of contract terms. For more on this, please see T Wilhelmsson, 'Private Law Remedies against the Breach of Information Requirements of EC Law', in Schulze, Ebers, and Grigoleit, *Informationspflichten*, 245–65; and Magnus U., 'Legal Consequences in the Acquis Communautaire' in *Information Obligations and Contract Conclusion in the Acquis Communautaire* (Ibidem Tübingen 2003*)* , 291–312; 255–8.
[105] Adamu v. Gulak (2013) LPELR-20844(CA)

be able to seek remedies regardless of whether the seller has the information or not, the standard should be – it is e-sellers' responsibility to provide all information reasonably expected to be provided under the information items listed above, this obligation cannot be assigned to a third party. Having set out the proposed reforms, this thesis moves on to examine how efficient these reforms could be. This will be done using Ramsay's cost-benefit analysis model.

3.4.3: Assessing the Efficiency of the Proposed Reforms.

Chapter one introduced Ramsay's cost-benefit analysis model, a tool for measuring efficiency in consumer law reform proposals. According to this model, a calculus that reduces costs and provides economic benefits exceeding the costs associated with a rule will result in efficient legal interventions.[106] This model recommends two key tests: the first is the identification of the source of the market failure, and the second requires comparing the recommended rule (which in this case is the introduction of mandatory information provision rules) with alternative responses to find out which of them provides better benefits to consumer welfare and reduces introduction, enforcement and compliance costs. Finally, it compares the costs associated with the unintended side effects of the recommended rule with those associated with the alternative responses. This thesis will analyse the reforms proposed in this subchapter 3.4 within these parameters.

3.4.3.1: Identify the source of the market failure.

The first test under this model is to identify the source of the market failure sought to be corrected with the reform. As described so far in this thesis, the nature of the digital market, the Nigerian legal system approach to pre-contractual information provision and the situation of the ordinary Nigerian e-consumer are sources of information failure in the Nigerian digital market, leading to the recommendation that mandatory pre-contractual information provision rules should be imposed on traders to assist Nigerian e-consumers in their information exploration process, consequently increasing the likelihood of informed decisions and a more effective consumer protection system.

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[106] Ramsay, (n.47) 45.

3.4.3.2: Analysing Alternative Responses.

Ramsay's model argued that the efficiency of a response to a market failure can be determined if there are no alternative responses that will harness better market incentives and results at a much more affordable cost. He offered five elements for conducting the second test. This thesis proceeds to assess the recommended rule against these elements. Before doing that, the first step is to identify the alternative responses. Aside from information provision rules, the alternative legal responses to uninformed decision-making in the consumer market are - implied terms rules, unfair terms rules, and the right of cancellation (the identified alternative responses).[107] Some of the identified alternative responses, like the implied terms rules and the unfair terms rules, already exist in the Nigerian legal system. However, as evidenced by the current position of e-consumer protection in the country, their effectiveness remains in doubt. Even though the United Kingdom adopted these alternative responses, information regulations remain at the forefront of its e-consumer protection system.[108]

3.4.3.2.1: Benefits to Consumers and Sellers

The first element of the second test requires lawmakers to determine the benefit of the recommended rule to consumer welfare and explore whether there are alternative responses that could achieve similar and better market results. On the benefits of the recommended provision rules, 3.3 examined the importance of mandating pre-contractual information provision to Nigerian e-consumers. It explored how it could help correct some of the Nigerian e-consumer issues identified in 2.2, such as literacy, uninformed decisions, infrastructural issues effects, etc. It connected e-consumers' improved contractual consent and informed decision-making in the digital market to information provision rules, highlighting that mandating information provision is a preventive approach that prevents uninformed purchase decisions, which consequently reduces the number of inefficient contracts in the market, and the need for consumers to seek redress. When the decision to purchase or not purchase is informed, many e-consumers are able to make decisions that fit their interests,

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[107] Kastle Lamparter (n.9) 286. See also Howells (n.13) 364-368.

[108] Hilton, Matthew. "Consumer Protection in the United Kingdom." (2006) 47(1) Jahrbuch für Wirtschaftsgeschichte, 45-60.

reducing their need for redress. This also increases market transparency, reputation and development and creates immense value for e-consumers.

In a nutshell, mandating information provision increases consumer welfare. Compared to the current state of e-consumer protection in Nigeria, it is without a doubt that the recommended information items will benefit e-consumer welfare in the country. Mandating the provision of the recommended identity information increases consumers' self-protection capabilities, acts as warning signals for fraudulent e-sellers, makes e-seller verification easier, facilitates redress actions and service of legal processes, makes it easier to assess e-sellers' market reputation, etc. Mandating information on the main characteristics increases e-consumers' ability to understand goods better before purchasing them. Furthermore, it allows for the efficiency of the implied term of description, given that the effectiveness of this implied term is tied to product information provided by e-sellers at the time of offering the product for sale.

Mandating the provision of information on price information prevents hidden charges and facilitates consumer confidence in the market. Given the distant nature of the digital market, the role of delivery arrangement information to consumer welfare cannot be overstated. Consumers are able to filter choices if available delivery options do not fit their needs. Finally, the mandated delivery information becomes a condition of the contract,[109] consequently improving the legal standing of the consumer in disputes arising from for non or late delivery.

Considering whether the identified alternative responses would provide better benefits to Nigerian e-consumers, 3.3.2 above explored arguments on whether substantive consumer protection mechanisms like the implied terms, the right of cancellation, etc., would provide better benefits. Flowing from these arguments, this sub-chapter submits that while these mechanisms have their benefits, the initial approach to consumer protection should be preventive and not corrective. Redress mechanisms such as the aforementioned are in place to correct market mishaps and uninformed decisions. Consumer law policymakers must remember that facilitating market functionality is as important as protecting consumers.

[109] Mustapha & Co vs NCEI (1955) 21 NLR, 69.

Market functionality will be affected when there is excessive focus on correcting market mishaps rather than preventing them. If the aim is to wait till consumers make mistakes and uninformed decisions before intervening to protect them, which is what these alternative responses do, more harm will be done to market reputation and consumer confidence than simply preventing them from making a mistake in the first place. Chapter one mentions that the Nigerian digital market is facing development issues, the regulatory approach currently in the country is corrective in nature. Given the low development in its digital market, this approach is obviously not working. This justifies the need for a new approach, one that prevents uninformed decisions. Furthermore, with a corrective approach to protection, e-sellers will build in redress and cancellation costs in product prices, further increasing costs for e-consumers. When information provision rules are introduced, and uninformed decisions are reduced, consumers would refrain from engaging with a market opportunity that does not benefit them, rather than expending cost to engage them and having to expend cost to correct them post-purchase. Furthermore, preventive measures relieve and reduce the pressure on redress and corrective mechanisms as they are left for consumers who, despite having the information, are unable to make informed decisions, consequently increasing their effectiveness as they are not overcrowded.

Flowing from the above, the benefits of the recommended rule to Nigerian e-consumers trump the benefits offered by the alternative responses. As echoed by Howells, information-based regulation needs to remain the focal point of consumer protection, with alternative responses cleaning up the spillovers from e-consumers who are unable to make informed decisions.[110]

3.4.3.2.2: Cost of Formulating the Recommended Rule.

Another element of the second test is to consider alternative responses that are less costly to formulate. Without an empirical study, it would be hard to determine quantifiable costs associated with introducing the recommended rule. This would require quantitative research on the cost of passing regulations or amending a law in Nigeria. However, what can be

[110] Howells (n.13) 356

acknowledged is that the delegated legislative power of the FCCPC[111] could help in curtailing costs for formulating the recommended rule.

Comparing this to alternative responses, there are existing rules on implied terms and unfair terms in Nigeria. However, despite their existence, e-consumer protection in Nigeria remains in a dire state. Chapter four and five identified the need for amendments and improvements of the framework on these alternative responses. These amendments will lead to rule formulation costs. In conclusion, this element of the second test evens each other out, there are costs associated with formulating both the recommended rule and the identified alternative responses.

3.4.3.2.3: Cost of Enforcing the Recommended Rule.

The third element of the second test element requires a comparison between the cost of enforcing the recommended rule versus alternative responses. Enforcement costs associated with consumer policies are in three forms:

1. regulator's costs for enforcing and ensuring compliance with the recommended rule (public funds);
2. e-sellers' cost for implementing the recommended rules (i.e., the cost of providing information to consumers) and;
3. e-consumers' costs of seeking remedies and redress for breach.

For effectiveness, there is a need for regulators' input in enforcing the recommended rule. With the nature of the virtual environment, tracking compliance with information provision rules should be achievable at a controlled cost, as regulators have to simply monitor e-sellers' websites. To further control costs, regulators should educate and incentivise e-consumers to whistle-blow. This will allow them to easily filter and enforce in a market filled with many buyers. Regulators' costs can also be passed to e-sellers as the FCCPA 2018 enables the FCCPC to issue fines against erring sellers,[112] these fines can be issued in a way that reflects the cost of enforcement. With these mitigators, regulators' enforcement costs can be controlled.

[111] FCCPA, s.17(b).
[112] FCCPC, s150 (b)

In comparison, the costs for enforcing the identified alternative responses are expected to be higher. This is because these alternative responses are corrective mechanisms whose compliance depends on e-consumers' initiating redress proceedings. Unlike compliance to information provision rules that regulators can track independently, alternative responses are consumer-triggered, adding another layer of cost as regulators would need to introduce an efficient complaint channel to investigate claims and enforce as needed. Regulator's enforcement cost with the identified alternative responses varies. With the right of cancellation, as stated in chapter six, consumers can unilaterally enforce, meaning enforcement costs are reduced except in cases where e-sellers fail to adhere to cancellation requests. However, enforcement costs increase significantly with the breach of either the unfair terms rules or the implied terms alternative responses. This is because they are responses that require dispute resolution channels either through the Competition and Consumer Protection Tribunal (CCPT) or the courts. Regulators would have to expend costs through the CCPT to adjudicate these cases or join the consumer claims in civil court as an interested third party.

Furthermore, the decision of the CCPT does not oust the civil court's jurisdiction to hear claims that the CCPT had adjudicated on. With this, an e-seller could seek an injunction to stop the FCCPC from enforcing any decision of the CCPT pending adjudication in court, consequently adding the regulator as a party and increasing enforcement costs. All of these contribute to enforcement costs higher than those needed to enforce the recommended rule, which in most cases would simply involve tracking the e-seller's website and enforcing compliance.

E-sellers' enforcement costs are those needed to comply with their mandated provision obligations. These costs are expected to be lower when compared to the alternative responses, which seldom require dispute resolution channels. In most cases, it is expected that providing information would be less expensive than having to attend claim proceedings to defend claims from e-consumers or paying fines for non-compliance. However, it should be acknowledged that with the right of cancellation, there is a risk that sellers would simply allow consumers to cancel low-value contracts as that maybe cheaper for e-sellers than to acquire and provide information on low-value products. E-sellers should not look at these cancellation costs from a single transaction point of view. Accumulated cancellation costs will,

at a point, end up being costlier than the cost of acquiring the needed information to comply with the recommended rules. Furthermore, reputational costs should also be considered as bad reputation hurts e-sellers in the marketplace. Therefore, from the e-seller point of view, the enforcement cost of the recommended rule is reduced compared to those that will be incurred with the identified alternative responses.

Finally, consumer enforcement costs can be traced to the access to justice issues discussed in 2.2.6. E-consumers will have to pursue remedies for e-sellers' non-compliance. These costs are similar to the implied term and unfair terms alternative responses, because consumers would need to enforce them through the courts or the CCPT. To mitigate this, the recommended self-enforcing remedies in 3.4.2 are expected to significantly mitigate these consumer enforcement costs. It is expected that a large majority of sellers will accept the enforcement of these remedies, with the small non-complying group left for the redress system, which includes the cost-effective CCPT.[113] It is important to mention that consumer enforcement costs would be cheaper with the right of cancellation alternative response. As seen in chapter six, the right of cancellation remedy is a self-enforcing right that hardly requires judicial intervention. While the right of cancellation alternative response offers the most cost-effective solution, the enforcement cost element of this test is not exclusive to e-consumer costs, it goes to both e-consumer, e-seller and regulator costs. When all these are combined, the recommended rule remains the most cost-effective choice.

3.4.3.2.4: Cost associated with the Unintended Side Effects of the Rule.

The final element considers the unintended side effects cost of the recommended rule versus the identified alternative responses. Staring with the recommended rule, an unintended side effect could be that by proffering a definite list of information to be provided, e-sellers end up neglecting other pieces of information, increasing the risk of e-consumers' other pieces of information that might have helped their decision making. The response to this argument is that, unless in cases of vulnerable consumers who are protected classes, consumer policies are interventions aimed at protecting the ordinary consumer, who is simply an average consumer of the relevant group-in-issue. It would be impossible to cater for all the pieces of

[113] FCCPA 2018, Part VII and s.148.

information that might be relevant to all individuals when making decisions. For example, a Muslim consumer would consider information about how the animal used for making a leather bag was killed relevant to his decision-making. A Christian or an Atheist consumer is not likely to consider such information relevant. Therefore, when a piece of information is a special and unique one, relevant to the individual consumer, information exploration obligations become solely on the e-consumer-in-issue. Such e-consumer needs to explore for the information, ask the e-seller or seek protection under the alternative responses. It is impossible for intervention mechanisms to cover all conceivable scenarios in the market or mandate the provision of all information, what it can do is take care of the common pieces of information that averagely recurs for the majority of e-consumers.

Looking at some of the unintended side effects of the alternative responses. These responses are corrective mechanisms, and as stated above, corrective mechanisms are not optimal when made the central plank for consumer protection. They are more efficient when used as complementary mechanisms to correct spillover from the recommended rule, which must remain the central plank for e-consumer protection. The primary unintended side effect of the identified alternative responses is their effect on market reputation, consumer confidence and market functionality. These responses are triggered post contracting, meaning that the contract sought to be remedied is ineffective for the consumer. This can be avoided with the recommended rule, where the consumer would have used the information provided to refrain from contracting in the first place. Ineffective contracts dents consumer confidence in the marketplace and affect market reputation and functionality.[114] Another unintended side effect is the dispute resolution costs that accompany the identified alternative responses. With the high access to justice costs in Nigeria, as explained in 2.2.6, coupled with the effect of taking a corrective approach to consumer protection, it becomes clear that the unintended side effects of the alternative responses outweigh those of the recommended rule. The analysis above reveals that while there are costs associated with the recommended rule, they are less when compared to the costs of the identified alternative responses. With this,

[114] Delorme Charles D., David Kamerschen, and Lisa Ford Voeks. 'Consumer Confidence and Rational expectations in the United States compared with the United Kingdom." (2001) 33(7) Applied Economics. 863-869

efficiency of the recommended provision rules can be presumed. This will improve the quality of decisions made in the Nigerian digital market, consequently developing the market.

Behavioural involvement in consumer policy formulation revealed that – even though mandatory information provision rules help, they do not definitively guarantee e-consumers' effective use of information.[115] It found that informed decisions and consumer self-protection are not always dependent on the quantity of information provided to consumers. Rather, they are very much tied to how well e-consumers could use provided information to make optimal decisions.[116] This "how well" issue led to the development of information rules.[117] Not to be confused with information provision rules, information rules regulate how information should be provided to consumers, while information provisions rules regulate what information should be provided to consumers. The latter has been the focus of this thesis so far. The former, which will be the focus of the next sub-chapter, aims to create a consumer protection system where information is provided in an adequate way that e-consumers can effectively use them for informed decision-making. This thesis moves to consider these information rules.

3.5: Information Rules – Clarity and Accessibility of Information.

One of the reasons why e-consumers do not use or attempt to use information is complexity and technicalities.[118] Information use can be improved if it is disclosed in a manner and form that e-consumers can easily understand and use without significant effort and costs.[119] Recent consumer policies include information rules which regulate how information is provided to consumers with the primary focus being making information easier for consumers to use.[120] Despite the absence of pre-contractual information provision rules in the FCCPA 2018, the Act

[115] Hadfield et al, (n.144), 131.
[116] Krebs (n.14) 164. – Krebs observed as follows - '*it is not simply the possession of information that is important, but rather the use which is, or can be, made of it by an average consumer.*
[117] Kastle Lamparter (n.9), 384
[118] Helberger N., Loos M. and Guibault L., 'Digital Content Contracts for Consumers.' (2013) Journal of Consumer Policy, 37–57, 49.
[119] Kastle-Lamparter, (n.9) 384. See also Fleischer H, *Contract-Related Information Obligations in Community Private Law (*8 Zeup 2000) 772, 786 and Wendehorst C, '§ 312a' in Säcker Franz Jürgen, Rixecker, Roland, Oetker, Hartmut, Limperg, Bettina (eds) *Munich Commentary on the Civil Code: BGB, Volume 3: Obligation Law General Part II (§§ 311-432)* (8th Edn, C.H. Beck 2019) 57.
[120] The Consumer Right Directive 2011/83/EU, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the SA-CPA 2008.

introduced several information rules. This sub-chapter will examine these rules to achieve two things: first, determine the extent to which they correct or seek to correct the information failure in the Nigerian digital market. Secondly, to determine how effective these rules will be for the above-recommended mandatory information provision rules. The effectiveness of the recommended rules depends on how well Nigerian e-consumers are able to use them. Information rules are indispensable in achieving this, hence the need to ensure their adequacy. Recommendations will be made where needed.

For ease of reference, the FCCPA 2018's information rules are provided below -

> **114(1): -** The producer of a notice, document or visual representation that is required under this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation - (a) in the prescribed form, if any, for that notice, document or visual representation; or (b) in plain language, if no form is prescribed for that notice, document or visual representation.
>
> **(2)** For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the notice, document or visual representation without undue effort, having regard to:
>
> a. the context, comprehensiveness and consistency of the notice, document or visual representation;
>
> b. the organisation, form and style of the notice, document or visual representation;
>
> c. the vocabulary, usage and sentence structure of the notice, document or visual representation; and

d. the use of any illustrations, examples, headings or other aids to reading and understanding.

(3) The Commission may publish guidelines on methods for assessing whether a notice, document or visual representation satisfies the requirements of subsections (1) and (2).

The FCCPA 2018's information rules are premised on how plain and understandable pieces of information provided to consumers are. This is known as the plain and understandable requirement. While the provision's objective is apparent (i.e., to ensure that information provided to consumers is clear and easily understood), the Act's construction creates a major uncertainty as to its scope of application, one that might affect its effectiveness. There is a need to consider this uncertainty to determine the extent to which it impedes its effectiveness for the aforementioned objective if it does.

3.5.1: The Limited Scope of the FCCPA's Information Rules.

As currently constructed, the provisions of s.114 do not extend to voluntary information disclosed by sellers. Section 114 ties e-sellers' obligations to mandatory legal requirements to provide information. The introductory paragraph to the section provides that sellers' compliance to the information rules is only limited to those "notice[s], document[s] or visual representation[s] that is required under this Act or any other law." Meaning, for the information rules in this provision to apply, there must be a legal requirement on the seller, either from the FCCPA or other law, to provide information. As shown so far in this thesis, Other than controlled goods such as food and drugs under the Food and Drug Act of 1976, where the disclosure of certification information is mandated,[121] sellers have no other mandatory requirements to provide information to consumers under the Nigerian legal system. With this absence, sellers retain the discretion on how they provide information to consumers. Of course, to compete in a market like the digital market that is heavily dependent on information, e-sellers will have to provide information about the product being offered for sale, however, the effect of the FCCPA 2018's approach of tying information rules to legal

[121] Food and Drug Act of 1976, s.8.

obligations to provide information is that these pieces of information voluntarily provided by e-sellers do not have to be provided in line with the Act's information rules, as they are not "legally required". This has dire consequences on the effectiveness of the information rules.

With this limitation, the FCCPA 2018 information rules become nothing but a toothless provision with little to no benefit to e-consumers when purchasing goods that are not controlled goods, like food and drugs. This leads back to the recommendation in 3.4. Introducing mandatory information provision rules will create legal provision obligations for e-sellers, bringing the mandated pieces of information under the ambit of the information rules.

3.5.1.1: Reform.

Apart from the recommendation in 3.4, which brings the recommended information items within the scope of the plain and understandable standard, a preferred recommendation would be an amendment of s.144 to remove the link between the information rules and legal requirements to provide information. Chapter 3.4 noted that there is a possibility that some consumers would need more than the information items recommended therein. Therefore, the FCCPA 2018's information rules must apply on an umbrella level to all information provided to e-consumers, regardless of whether they are mandated by law or not. By removing the link between the information rules and the legal requirement to provide information, e-sellers will be required to comply with the information rules when providing any information to e-consumers. The trigger for applying the information rules should be – 'provision to e-consumers'. Once information is provided, it must align with the information rules. The information rules standard under the FCCPA 2018 is the plain and understandable standard. This thesis moves to consider what this standard is.

3.5.2: What is "Plain and Understandable"?

The FCCPA 2018 focused on two key components in explaining what qualifies as plain and understandable. The first is the recipient of the information (who must be an ordinary consumer), and the second is the construction and appearance of the information (which must follow the guidance tools in 114(2)a-b). This is a laudable approach because, by catering for both the information and the user of the information, the Act ensured that the content of

the information is provided in a way that helps the actual/intended user of the information (i.e., the ordinary consumer of the product-in-issue) and not just an umbrella standard for all consumers in the market. These two components are not independent, e-sellers must collectively comply with both when providing information. In short words, a piece of information is plain and understandable if the construction and appearance of the information satisfies the standard set by the guidance tools in a way that the intended recipient (an ordinary consumer) can understand them. This thesis starts with the recipient by looking at who an ordinary consumer is under the Act.

3.5.2.1: The Ordinary Consumer.

Given the number of consumers, the differences between individuals, and the different demands of consumers,[122] consumer policies are usually introduced with a hypothetical consumer benchmark. This benchmark represents the idea of who the state or intervening authority believes fits the scope of the group of consumers the law-in-issue seeks to protect. These benchmarks are accompanied by characteristics to guide their interpretation. For example, the European Union and the United Kingdom have the "average consumer" benchmark, which is a person that is "informed, observant and reasonably circumspect".[123] This benchmark has been found to be an efficient approach, given that it is simply impossible to take care of the peculiarities of all consumers in the market.[124] Therefore, a well-drafted standard of a hypothetical consumer that takes care of a large majority of the target consumer is sufficient for protection. The FCCPA 2018 takes a similar approach with the "ordinary consumer" benchmark.

The FCCPA 2018 defined an ordinary consumer as "someone with average literacy skills and minimal experience as a consumer of the relevant goods or services and could be expected to understand the content, significance, and import of the description provided without

[122] Micklitz H., 'Unfair Commercial Practices and Misleading Advertising', in N. Reich, H.-W. Micklitz, P. Rott & K. Tonner (eds), *European Consumer Law* (Cambridge: Intersentia 2014), p 98.
[123] The Court of Justice of the European Union Case C-120/78 Rewe-Zentral AG v Bundesmonopolverwaltung fuer Branntwein [1979] ECR 649, judgment of the ECJ of 20 February 1979. See also R Incardona and C Poncibò, 'The Average Consumer, the Unfair Commercial Practices Directive, and the Cognitive Revolution' (2007) 30 Journal of Consumer Policy 21, 29.
[124] Schebesta, Hanna, and Kai Purnhagen. "Island or Ocean: Empirical evidence on the Average Consumer Concept in the UCPD." (2020) 28(2) European Review of Private Law, 293.

undue effort". Essentially, this ordinary consumer must be literate and must have minimal experience about the product/subject matter of the contract in a way that allows them to understand information related to the product. The literacy requirement should not be an issue given that 84.9% of Nigerians are literate and can read and write simple English language. An ordinary consumer, with average literacy skills would be able to read and understand information provided in simple, clear, unconvoluted and easy-to-understand English language, which is the country's official language. The literacy requirement is satisfied as long as the disclosed information is in simple and easy-to-understand English.

While the literacy requirement is easier to determine, the minimal experience requirement is more complex and difficult to ascertain. This is because of the relative nature of consumer contracts and the wide variety of consumer goods sold at the retail level of the digital market. Minimal experience is the existence of some level of past knowledge and purchasing experience on the subject matter of the contract at the commencement of the precontractual stage. Purchasing experience comes in two forms: general and specific. General experiences are those obtained simply by being a consumer, while specific experiences are concerned with specific products. For example, when purchasing an induction pot, the standard delivery information would require general purchasing experience because, unless otherwise stated, standard delivery is usually within three to five business days across the market, regardless of the product. Even if the e-consumer is a first-time consumer of induction pots, his knowledge of standard delivery obtained from previous purchases will count as "experience" for the purpose of determining minimal experience under the ordinary consumer benchmark. However, for the same consumer, information on what an induction pot is, and the types of cookers that could use one would fall under the specific purchasing experience umbrella. While the phrase "standard delivery" would be sufficient in providing delivery information, an umbrella "electric cooker" would not be sufficient to describe the type of cookers that can use induction pots unless the induction pot-in-issue can be used by all electric cookers regardless of their heating plates.

The standard for clarity and simplicity applied to information under the specific experience umbrella must be higher than those required under the general experience umbrella. Information related to general purchasing experience could be of much higher level and

uniform, but those related to specific purchasing experience require meticulousness, specificity and should be much simpler and uncomplex to ensure compliance with the "minimal experience" requirement of the ordinary consumer benchmark.

Looking at the list of information recommended in 3.4, information on the sellers' identity, delivery information, dispute resolution information, and payment would be general experience information, while information on the main characteristics of the subject matter of the contract and other unique contract terms would be specific experience information. However, it is important that general experience information are not set in stone as there are cases where they could be specific experience information. For example, information on payment and charges would become a specific experience information if the e-seller offers a payment plan that includes a tiered interest rate, or if the e-seller offers a different dispute resolution mechanism not commonly used in the Nigerian market.

While writing this subchapter, there were concerns that by including minimal experience in determining who is an ordinary consumer is, the FCCPA 2018 neglected first-time consumers and exposed them to risk. However, these worries were discarded with the realisation that to protect the functionality of the digital market, there is a need for all e-consumers to have at least, a given level of experience about both the market of choice and the product-in-issue. As mentioned above, there is a need for a benchmark. Such benchmarks must not affect the functionality of the market by oversimplifying and creating excessive standards with adverse effects. It is not optimal to mandate e-sellers to over-simplify information, as over-simplification could lead to negative biases such as information overload.[125] Complementary and alternative protective mechanisms should be considered for consumers who fall below this ordinary consumer threshold. One of these could be the right of cancellation (see chapter six) to allow these categories of consumers to cancel the contract resulting from uninformed

[125] These include rational apathy, rational ignorance, excessive optimism, hyperbolic discounting, etc. For more on this, see Faure G and Luth H "Behavioural Economics in Unfair Contract Terms" (2011) 34 Journal of Consumer Policy 337–358. For more on rational apathy and consumer behaviour, see Bergh R and Visscher L 'The Preventive Function of Collective Actions for Damages in Consumer Law (2008) 1 Erasmus Law Review, 5. This is also extensively discussed in chapter three.

decisions. Another could be illiteracy protection laws, which are in place to protect illiterate consumers. [126]

It is important to mention that under the minimal experience requirement, minimal should indeed be minimal. For specific experience information, minimal experience should be limited to the overall purpose of the product-in-issue. For example, a person approaching the market to buy an induction pot should be reasonably expected to know what a pot is used for. This function of a pot is the minimal experience. The induction capabilities would not qualify as minimal as it is not a general use or feature of pots. From the examination above, this thesis concludes that given the wide varieties of consumer goods in the Nigerian digital market, the concept of the ordinary consumer as construed under the FCCPA 2018 is a practical approach and sufficient to protect e-consumers in Nigeria by ensuring that the quality of their decisions is improved. With the understanding of the first element, this thesis moves to consider the second element, which focuses on the content of the information.

3.5.2.2: The Construction and Appearance of the Information.

On the second element for determining the plain and understandable standard, which is the construction and appearance of the information in issue, the FCCPA 2018 introduced specific guidance tools primarily to guide sellers when providing information. However, these guidance tools would also help the e-consumer understand their rights on how information should be provided to them. It will also assist interpreting bodies when implementing the plain and understandable standard. These tools are to be used considering the reasonable expectation of the ordinary consumer discussed earlier. The first and third tools were concerned with ensuring that information provided is relevant to the purchasing activity in question (in context), coherent, logical, free from contradictions(consistent), and easy to

[126] An example would be the illiterate protection laws. For example, s.2 of the Illiterates Protection Law Chapter I4, Laws of Lagos State, Nigeria, 2015 mandates the inclusion of an acknowledgement that shows that an illiterate person had been made to understand the contents of a document in an understandable language before affixing his signature to such document. This duty extends to the provision of the particulars of the person who explained the contents to the illiterate person. When interpreting the same provision under the 1994 version of the Illiterates Protection Law of Lagos State in Lawal v. Ollivant (1972) 3 SC 124, the Supreme Court maintained that the illiterate protection law '*is like a very wide umbrella and covers all forms of writing or document written at the request of an illiterate person'*.

understand (comprehensible). While it appears that the "in-context" requirement might be superfluous given that sellers would naturally be expected to only provide information that are in context to the product being offered for sale, available research has shown that e-sellers are able to manipulate consumer decision-making with information.[127] For example, including a sentimental phrase such as " the manufacturer donates 50% of the proceeds to support Palestine in its fight against oppression" right in the middle of information on the main characteristics of a hijab product for sale would not be in context as the e-seller could be said to be using sentimental facts to derail the e-consumer's attention away from the main characteristics of the product. This does not mean such information cannot be provided later, it should not just be in the middle of the main characteristics of the product. Coherent and logical are apparent and clear, while consistency speaks to fairness, accuracy and absence of contradictions. E-sellers should not have contradictory terms that would confuse the consumer in decision-making. The easy-to-understand requirement requires provision in clear sentences, easy-to-use and unconvoluted words. The language and words used in providing information should be at the barest minimum that an ordinary consumer (with attention to literacy and minimal experience) can understand.

While the first tool looks at the information's construction, the second focuses on the information's appearance and organisation as provided. Provided information must be organised in a format and style that facilitates the ordinary consumers' ease of understanding. Under this tool, fonts, colour, and location of the information on the e-seller's website will come into consideration. Information provided in fonts that are too hard or small to read, broken links, or hidden in a section of the website that a consumer is not reasonably expected to get to would not be plain and understandable. For example, e-sellers who offer a "buy now" option from the catalogue page (this option takes consumers from the catalogue search page to the checkout page) would fail this test for important product information (such as the main characterises of the product) provided on the product page, unless the information is re-provided at the checkout page or if e-consumers are informed clearly on the checkout page that there are important product information on the product page and an hyperlink to the

[127] Luth H., 'Behavioural Economics in Consumer Policy: The Economic Analysis of Standard Terms in Consumer Contracts Revisited.' (PhD Thesis, Erasmus University Rotterdam, 2010) 23

information provided. It is important to state that there are a lot of uncertainties with fonts as e-consumers' devices usually control them. However, the impact of 'reasonableness' on the provision of s.114 will allow interpreting authorities to take this into consideration when making an assessment. Controlling presentation and appearance of information is not unique to the FCCPA 2018, advanced international regulators such as the European Union have also introduced similar rules. Commenting on CRD 2011 information rules, the European Commission echoed that the presentation and appearance of information must be one that brings the individual elements of the information to the consumer's attention.[128] It also maintained that information should not be lumped with other terms and conditions. In its words - "It is not sufficient to provide the mandatory pre-contractual information merely as part of the general terms and conditions that the consumer may have to accept before moving on in the transaction process."[129]

The fourth tool was a signal from the FCCPA 2018 to sellers on the importance of illustrations and examples in information provision. Illustrations and examples are key information facilitators that have been shown to improve the understandability of information.[130] When the information to be provided is too complicated and not easily explained in words, the Act mandates the use of illustrations and examples to aid consumers' understanding of the provided information. Image illustrations could be a helpful choice here. Images can be used to draw attention to information. Finally, e-sellers are allowed the discretion to employ other aids that could help e-consumers understand the provided information better. The more helpful aids included with the information, the easier e-sellers can prove compliance to the information rules.

So far, this subchapter found the plain and understandable standard sufficient and effective for protecting Nigerian e-consumers, given that it focused on the recipient and the content of the information. By ensuring that the standard for determining the ordinary consumer standard considers the product experience and literacy of the recipient, provision becomes

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[128] European Commission, 'Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(04) accessed 26 March 2024. Para. 3.1.2

[129] ibid

[130] Percy Larry, *Strategic Integrated Marketing Communications* (Routledge 2008) 24

more personalised for e-consumers based on the product being purchased. This allows a system where the more complex the product, the greater the responsibility of e-sellers to ensure plainness and understandability. Furthermore, with the guidance tool for determining the construction and appearance of information, the plain and understandable standard brings into the picture factors that aid in understanding information.

Despite these lauded contributions which is a massive positive shift from the pre-FCCPA era, there remains the issue of the limited scope of the plain and understandable standard as discussed in 3.5.1. Without information provision rules, the effectiveness of the plain and understandable standard remains in doubt as sellers would simply choose what to provide and what not to provide. As noted in 3.3, this approach is not advantageous to Nigerian e-consumers. However, on the bright side, if the information provision reforms recommended in 3.4 are introduced, the effectiveness of the plain and understandable standard would significantly increase.

3.5.2: Remedies for Non-Compliance with Information Rules.

The FCCPA 2018 introduced statutory fines for violations of the provisions of the Act. When non-compliance occurs, the FCCPC is equipped to issue a compliance order. Non-compliance with the compliance notice within a period set by the FCCPC triggers administrative fines.[131] At the individual contract level, if an e-consumer can show that non-adherence to the plain and understandable standard misled him into entering into the contract as the manner of presentation led to misinterpretation, the statutory remedies of damages and monetary restitution become activated.[132] The consumer can also claim damages in tort by filing a claim for the tortuous breach of statutory duty.

Aside from the statutory remedy, the consumer could activate the common law avoidance for mistake remedy.[133] To activate this remedy, the consumer would be expected to show that he entered the contract mistakenly due to the unclear and non-understandable nature

[131] FCCPA 2018, s150(1-4)
[132] ibid
[133] Nassar and Sons (Nig.) Ltd v. L.E.D.B. (1959) 4 FSC 242

of the proffered information. This brings back the access to justice issues discussed in 2.2.6, questioning the effectiveness of this for e-consumer protection.

3.5.2.1: Reform.

A suitable remedy would be those recommended in 3.4.2, i.e., conferring e-consumers with the unilateral right to cancel the contract under the right to cancellation remedy that will be discussed in chapter six.[134]

3.6: Conclusion.

This chapter acknowledged the vital role of information in e-consumers' self-protection and decision-making. With information acquisition being the sole responsibility of Nigerian e-consumers, this chapter examined whether Nigerian e-consumers are capable of independently and effectively acquire and use information in the manner presumed upon them by their legal system. This examination resulted in a negative, leading to a recommendation that e-consumers should be assisted in their information exploration process by mandating e-sellers to provide relevant information to them. Learning from other jurisdictions, selected categories of information were recommended. The recommended mandatory information provision rules and information items were analysed for efficiency, leading to a positive conclusion on the efficiency of the recommendations.

Furthermore, this thesis pointed out the role of information rules in modern consumer policy, stating that the recommended mandatory information provision rules would be more effective if supported by competent and adequate information rules. It was pointed out that these rules are contained in the FCCPA 2018. These provisions were analysed for effectiveness. The overall conclusion is that the plain and understandable standard under the FCCPA 2018 provides a comfortable level of protection for e-consumers. However, the limitations surrounding the restricted scope of the provision were pointed out. Recommendations were made on how to correct these limitations.

[134] South Africa introduced similar remedy for e-seller's breach of mandatory information obligations under s.43 of the ECTA 2002.

Admittedly, mandatory information regulations will play key roles in e-consumer protection in Nigeria. However, there are a few concerns that cannot be ignored. The infrastructure issues identified in 2.2.3 could impede some e-consumers in Nigeria from using information, even when they are adequately provided using the recommendations made in this thesis. These infrastructural issues cannot be legislated on within the consumer protection realm as it would require non-legal efforts to correct them. Regardless of how adequate legal mechanisms are, they can only have the projected impact if infrastructures are put in place for ease of access to the digital market at a low cost and if, among other non-legal interventions, consumer and digital literacy is increased for Nigerian e-consumers,

Aside from the Nigerian situation, 3.3.2.2 referred to several research which found that some consumers would not use information regardless of how well it is provided to them.[135] This group of consumers still need to be protected. While it is expected that many e-consumers would benefit from an efficient information regulatory environment, some would struggle to efficiently use provided information for decision-making due to reasons unrelated to the inadequacy or inefficiency of information regulations. This thesis acknowledges these limitations of information regulations and will consider complementary legal mechanisms and responses, such as the control of unfair terms, the right of cancellation, implied terms, etc., to correct cases where e-consumers are unable to efficiently use information. This thesis also acknowledges that there is a need for a hybrid e-consumer protection system, one that has information at its forefront and supporting protective mechanisms to pick up the spillover from the limitations of information, i.e., e-consumers that are unable or did not use provided information for self-protection or informed decision making. However, it is important to remember that as concluded in 3.3.2, information regulations must remain the central plank for e-consumer protection, with these other mechanisms supplementing and complementing it.

Some of the above-mentioned complementary mechanisms include but are not limited to the control of unfair terms, the right of cancellation, implied terms, and, in extreme cases, the

[135] Howells (n.13), 365

prohibition of certain types of contracts.[136] This thesis will examine the provision of the FCCPA 2018 on these mechanisms in chapters four, five and six. This thesis moves to consider the first complementary mechanism, the FCCPA 2018's implied terms of description, purpose and quality.

[136] Kastle Lamparter (n.9) 386.

CHAPTER FOUR.

THE STATUTORY IMPLIED TERMS

4.0: Introduction.

Chapter three concluded that even if e-sellers provide adequate information to Nigerian e-consumers, there are barriers impeding their ability to access and use the information effectively for decision-making. Furthermore, the law cannot simply rely on information regulations as its sole protective mechanism. Admittedly, information regulation should be the foundation, however there is a need for other e-consumer protection mechanisms to protect e-consumers' interests in the digital market. One of these mechanisms is the implied terms regulations. Of course, the purpose of the implied terms is not solely to correct uninformed purchase decisions, it also improves e-consumer protection as a whole because it provides remedies for e-consumers when goods delivered to them are as not as described, unfit for purpose and not of acceptable quality.

Not to be confused with implication by custom or facts, the use of "implied terms" in this chapter will only focus on the FCCPA 2018's implied terms of description, quality, and purpose. This chapter will analyse the protections available to Nigerian e-consumers by these implied terms, as provided for by the FCCPA 2018. The efficacy of these implied terms will be assessed with keen consideration given to the peculiarities of the Nigerian environment and digital market highlighted in chapter two. Reforms will be recommended as necessary.

4.1: Implied Terms and the FCCPA 2018.

Implication of terms into contracts is a popular mechanism employed to facilitate efficient contracting.[1] Some justifications for interfering in the market with implied terms include but are not limited to ensuring fairness and effective dealings for commercial purposes,[2] balancing contracting power, protecting contractual purposes,[3] ensuring efficient operation

[1] Cohen George M., 'Interpretation and Implied Terms in Contract Law' in Encyclopaedia of Law and Economics, (2011) 6 Contract Law and Economics 6, 5.
[2] The Moorcock (1889) LR 14 PD 64 (CA).
[3] Also known as, the business efficacy test. See Shell UK Ltd v Lostock Garage Ltd [1976] 1 WLR 1187 (CA).

of contractual agreements,[4] and reducing abuse, such as contracting parties circumventing legal frameworks. Exploiting a legal environment that gives them discretion on what to disclose, Nigerian e-sellers are notorious for disclosing information that only helps them achieve their profit-making objectives.[5] They employ various advertisement tactics, which include, but are not limited to, vague and generic words when describing products for sale.[6] With these marketing tactics, e-consumers realise the inefficacy of the contracts after the contract has been concluded. [7] While the preceding chapter looked at information provision and how it can help correct some of these anomalies, it emphasised the need for complementary mechanisms, such as the implied terms, to protect e-consumers who are unable to make informed decisions.

Since adopting the SGA 1893 in 1960, implied contractual terms have been vital to Nigerian consumer protection legal frameworks. The low development and dearth of specific consumer protection frameworks in Nigeria saw them gain popularity with consumers.[8] This heavy reliance can also be attributed to the legal system applying strict liability to breach of these implied terms.[9] With the strict liability application, e-sellers, who are sometimes not the manufacturers of products offered for sale, are held liable for any breach of these implied terms, even if they are unaware of the circumstances leading to the breach.[10]

With the enactment of the FCCPA 2018, the provisions of the implied terms under s.13 and s.14 of the SGA 1893 become impliedly repealed.[11] Just as obtainable under the SGA 1893,

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[4] Vestergaard Frandsen A/S v Bestnet Europe Ltd [2013] UKSC 31; [2013] 1 WLR 1556 [31].

[5] Ilobinso Ihuoma., 'A Critical Analysis of the Online Consumer's Right to Information in Nigeria' (2022) 4 International Review of Law and Jurisprudence, 89.

[6] Some of these words include 'multi-purpose', 'all-purpose', 'multi-use' etc. – ibid.

[7] Filani A. and Aina S., 'Commerce and Enforcement of Consumer Rights in Nigeria: Issues, Prospects and Challenges' [2020] 3(1) Journal of Law and Judicial System, 1-15.

[8] Mmadu Rufus Akpofurere, 'Application of Implied Terms in the Sale of Goods Act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts.' [2014] 2(2) Journal of Business Law. 63-106. p.63.

[9] Whether sellers are aware of the breach or not, these terms are actionable per se. Kanyip B., 'Service Liability under Nigerian Consumer Law' [2005] 1(1) Consumer Journal, 90-95.

[10] Kanyip B., Consumer protection in Nigeria: Law, Theory and Policy (Reckon Books Limited; Abuja 2005). 30. See also Swiss-Nigerian industries Ltd v Oanilo Boqo S.C.14/70 (unreported) decided on 3/7/70.

[11] Ibidapo V Lufthansa Airlines 3 (1997) 4 NWLR 124. The Court held that a received English law becomes implied repealed when a local statute provides for the issues covered by the said Received English Law. By including these implied terms in the FCCPA 2018, the implied terms of the SGA 1893 become repealed and inapplicable for consumer contracts in Nigeria.

the FCCPA 2018's implied terms of description, purpose and quality confers certain responsibilities on sellers in consumer transactions. The first is that when goods are sold by description, they must adhere to the description provided when offering them for sale.[12] The second mandates that goods must be fit for the purposes for which they are supplied. And the third requires that goods be of a given quality standard.[13] While the over-arching objective of the implied terms as existed under SGA 1893 was retained by the FCCPA 2018, the construction of the FCCPA 2018's provisions amended how the implied terms apply. This chapter will explore these changes to identify their effectiveness for e-consumer protection, with recommendations made along the way.

With the absence of judicial activities and academic works on the provisions of the implied terms under the FCCPA 2018, this chapter will use available judicial precedents interpreting the provisions of the SGA 1893 as a guide to analysing the provisions of the FCCPA 2018. This is because, despite the differences in provisions, the objective of the implied terms under both laws remains the same. However, caution will be exercised because the SGA 1893, as adopted in Nigeria, is focused on general sale of goods contracts and not specifically consumer contracts. Therefore, most interpretations of the SGA 1893 fail to consider the power imbalance and other peculiarities of consumer contracts conducted in the digital market. With this realisation, cases based on B2B contracts should be cautiously applied when interpreting consumer policies for e-consumer protection. In using available precedents, it will be considered whether it is sensible to apply a given ratio, obiter or principle to e-consumer contracts, bearing in mind the imbalance of power in the market, the nature of the digital market and the present situation of the ordinary Nigerian e-consumer.[14]

Furthermore, as discussed in 1.4, because of the recency of its enactment, the jurisprudence and scholarship around the application of the FCCPA 2018 is underdeveloped. Therefore, this chapter may experience some setbacks when making an in-depth legal analysis of the Act's implied term rules. To cover this gap, this chapter will make some comparisons, where

[12] FCCPA 2018, s.121(3)
[13] FCCPA 2018, s. 121(3) - Description, and s.131 - Fitness to Purpose and Quality.
[14] Krebs J., 'Online Contracting and the Supply of Digital Content to Consumers' (PhD Thesis, Swansea University, 2018), 107. Krebs advised caution when applying the interpretation given to the SGA in consumer contracts. Krebs ascribed this to the fact consumer protection movements are a fairly recent development.

needed, with the implied terms currently existing under the United Kingdom's Sale of Goods Act 1979[15] and Consumer Rights Act 2015.[16] as they are arguably more mature with relatively advanced jurisprudence on its application. It is reasonable to look to updated English law frameworks for guidance on how the implied terms received from English law can be developed to catch up to the modern paradigms of sale of goods contracts. At this stage, this chapter moves to examine the first implied term, the implied term of description.

4.2: Implied Term of Description.

Section 121(3) of the FCCPA 2018 states:

> 'where a consumer has agreed to purchase goods solely on the basis of a description or sample, or both provided by the supplier, the goods delivered to the consumer shall in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample as the case may be.'

The Implied term of description requires that when a product is sold based on descriptions, the delivered product must fit those descriptions as provided at the time of purchase. The implied term of description is a received English law that the courts have interpreted as covering transactions where the buyer contracts before physically examining the subject matter of the contract.[17] The typical feature of the digital market reflects this position as e-consumers depends on descriptive information to decide whether to purchase a product or not. Therefore, the implied term of description will apply to most, if not all transactions conducted in the B2C digital market. To offer goods in the digital market without any significant description seems only likely in a contrived attempt to intentionally exclude the implied term of description,[18] a situation that would lead to liability under s.144 of the FCCPA 2018. This provision prevents e-sellers from restricting or excluding any of the implied terms in the Act.[19] Therefore, there is little chance that any B2C contract conducted in the digital

[15] 1979 c. 54
[16] 2015 c. 15
[17] Channell J in Varley v Whipp [1900] 2 WLUK 27. See also Travers (Joseph) v Longel [1947-51] C.L.Y. 9252
[18] Krebs (n14), 102
[19] See chapter five on Unfair Terms

market would not be by description. While it is clear that the implied term of description covers e-consumer contracts, this sub-chapter will assess the level of protection offered by the specific provisions of the FCCPA 2018 on this implied term, to e-consumers in the country.

The FCCPA 2018 expressly states that the implied term of purpose and quality (which are discussed in 4.3 and 4.4) are warranties,[20] however the Act was silent on the implied term of description, which means the intention is to retain its position under s.13 of the SGA 1893 as a condition. Although the implied term of description was introduced into the FCCPA 2018 to protect Nigerian consumers and limit the potential power asymmetries that exist between them and sellers, there are certain inherent challenges in its application. One of these challenges is the lack of clarity regarding the meaning of 'description,' which gives room for several interpretations and legal uncertainties.[21] The FCCPA 2018 does not define 'description' or offer any guidance on what constitutes 'description', therefore, the existing definition of description, as defined by case laws, remains the law. The High Court in T.E Demuren v Atlas Nigeria Limited,[22] relied on the decision of the English court in English case of Ashington Piggeries Ltd v Christopher Hill Limited,[23] and defined description as "any term that identifies the goods being sold." Tying description exclusively to information identifying the purchased goods could be problematic as such a definition is too narrow.

With the development of the digital market and the emergence of various marketing strategies, e-consumers are usually provided with several descriptive communications regarding goods offered for sale, with some identifying the goods and others not.[24] There is a need to extend the scope of what qualifies as "description." The is because e-consumers' decision to purchase is not always because of information identifying a product. In fact, a non-

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[20] FCCPA s.132(1)

[21] Monye F., *Law of Consumer Protection* (Spectrum Books Ltd, 2003) 205 - 206, Okey Achike, *Commercial Law in Nigeria* (Fourth Dimension Publishers 1985) 204

[22] (1976) 12 CCHJ 2709. (The Demuren case)

[23] (1972) AC 441. (Ashington Piggeries case) Lord Diplock held as follows "…It is open to the parties to use a description as broad or as narrow as they choose. But ultimately the test is whether the buyer could fairly and reasonably refuse to accept the physical goods proffered to him on the ground that their failure to correspond with what was said about them makes them goods of a different kind from those he had agreed to buy. The key to s. 13 is identification."

[24] Ivan L Preston, *Great American Blow-up: Puffery in Advertising and Selling* (2nd edn, University of Wisconsin Press 1996) 20.

identifying descriptive information might influence the decision to purchase the product more than one that identifies the goods. For example an ethical e-consumer, who only purchases goods produced in countries with fair working conditions for workers, may only decide to purchase based on the production location rather than information on the dimension of the goods which identifies the goods. Therefore, it is concerning that in situation where an e-seller either falsely describes goods produced in such countries as being ethically produced or falsifies the country of production, such communication, regardless of its influence on the decision to contract, would not enjoy the protection of this implied term since communications on location and working conditions do not identify the goods-in-issue. Of course, in the above scenario, e-consumers would be able to also seek protection under the FCCPA 2018's unfair terms' regulations (as discussed in chapter five) and misrepresentation laws. However, as will be discussed in chapter five, the efficacy of the remedies available for the breach of unfair terms regulations remains in doubt. Protecting e-consumers under this implied term by extending the scope of what qualifies as description will offer an improved protective environment.

An argument that production location information identifies goods would fail because of the restrictive interpretation of "identifying communication" by existing judicial precedents.[25] In the English case of *Reardon Smith Line v Yngvar Hansen-Tangen*,[26] Lord Wilberforce rejected arguments that information about the location where a ship is built qualifies as one identifying the ship within the context of this implied term. He maintained that the implied term of description should be confined to communication, which constitutes a 'substantial ingredient of the "identity" of the thing sold' and that the location where the ships were built is not one. Although there are no judicial activities from the Nigerian courts on how to definitively determine what constitutes 'identifying information, the influence of the English courts' decisions on Nigerian courts leads to a conclusion that the court might take the position of the English courts in determining what qualifies as identification given that

[25] Reardon Smith Line v Yngvar Hansen-Tangen (1976) 1 WLR 989 HL
[26] ibid

decisions of the English Court are usually persuasive precedents in Nigerian courts.[27] Applying the above case to the modern digital market, information about where a piece of shirt is manufactured would not qualify as 'description' simply because it does not constitute a substantial ingredient of the identity of the shirt. However, as explained above, it is likely to be one that influences the decision of an ethical e-consumer more than identifying information, such as colour or fabric. There is a need to expand the scope of what qualifies as description.

4.2.1: Reforms.

As mentioned above, extension of the scope of description is needed for effectiveness. In recommending how this extension should be made, this thesis will learn from the United Kingdom's Consumer Rights Act of 2015 (CRA 2015) where it was shown that English lawmakers recognised that limiting description to identification as done by English Court in the Ashington Piggeries case is too narrow, therefore, they made the meaning of description broader and non-technical.[28] In addition to identification, s.11 of the CRA 2015 included in the determination of description, the main characteristics information provision obligations of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR 2013).[29] This means that any information that falls under the umbrella of "main characteristics" as required by r.13 of CCR 2013 would qualify as description. Referring back to 3.4, this thesis recommended that Nigerian e-sellers should be mandated to provide pre-contractual information on the main characteristics of goods. As analysed in 3.4.1.2, it was shown that "main characteristics" is of broader scope than "information identifying the goods being sold" as defined by the Nigerian High Court in the T.E Demuren v Atlas Nigeria Limited.[30] Several authors have discussed what qualifies as main characteristics and though they were not able to provide a definite definition, the consensus from all of them is that 'main

[27] Eliochin (Nigeria) Ltd. v. Mbadiwe [1986] 1 NWLR 47. The Supreme Court of Nigeria highlighted the persuasive nature of decisions from the United Kingdom courts and their influence when there are no local precedents on an issue before the court.
[28] Fairgrieve Duncan, and Richard Goldberg, *'Implied Terms as to Correspondence with Description, Satisfactory Quality, And Fitness For Purpose', Product Liability* (Oxford Academic 2020), 88
[29] CRA 2015, s.11 (4)
[30] Demuren v Atlas Nigeria Limited (n.21) 2709.

characteristics' cover the core elements of goods being sold. [31] They also concluded that 'main characteristics' should be relative and the afore-stated core elements should be determined based on the complexity of the goods and the nature of contracting (with a higher standard needed in the digital market given the inability to physically examine).[32] The use of "main" in 'main characteristics' means not all information on the characteristics of the product would qualify description, therefore, there is a need to consider principles that can help guide interpreting authorities to determine what qualifies as "main" and what does not.

To determine which characteristics is "main," existing precedents reveals that the court has previously used adequate show of intention as a test when filtering the importance of contract terms.[33] In determining adequate show of intention, the court in Ogwu v Leventis,[34] have used the level of influence the given information has on the conclusion of the contract. Within this context, that would require looking at the extent to which the buyer reasonably relied on the information to purchase the goods in issue (the level of influence test). In the Ogwu case, the buyer purchased a lorry marketed as a one year second hand lorry with registration number BYA 648, however he was delivered a four-year-old second-hand lorry with the same registration number. The fact of the case showed that the buyer had the opportunity to purchase other lorries but chose the purchased one because of its age. The sellers' defence that the age of the car is a mere representation was rejected, and the court held it to be an express contract term.

This level of influence test can be adopted to determine information that is of main characteristics and those that are not. Interpreting authorities should look at the facts-in-issue to determine the impact of the information on the e-consumer's decision to contract. Some of the pointers that maybe giving more weight to repetitive product related information that are so repetitive in marketing materials that it is reasonable to expect e-consumers to be inevitably influenced by them. [35] Another could be unique goods with distinctive factors that

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[31] Kastle-Lamparter D., 'Pre-Contractual Information Duties' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018) 434 and S Grundmann S., 'The EU Consumer Rights Directive, (2013) 68 JuristenZeitung 53–65, 57

[32] Kastle Lamparter (n.30) 434

[33] See Heilbut, Symons and Co v Buckleton [1913] AC 30.

[34] (1962) NNLR 115. (the Ogwu case)

[35] Krebs (n.14) 104.

it is inevitable that such factor would influence the decision to purchase or not. An example of this would be the case for ethically produced goods.

To reduce the risk of uncertainties with extending identity to include "main characteristics," there should be a heavy reliance on reasonability and the reasonable man test.[36] Within this context, the reasonable man [e-consumer] will be placed with the facts in issue to determine the level of influence the product related information would have on the said hypothetical e-consumer, this would determine whether such main characteristics information qualifies as description or not. Using the ethical consumer example stated above, claims from such e-consumer that information on the ethical means of producing of a pair of shorts influenced him to buy a piece of shirt should succeed, if facts shows that the e-seller marketed itself as an ethical e-seller whose goods are ethically produced. The court may also consider whether the e-consumer has a purchasing culture of purchasing from ethically made goods. This would not be the same if the decision to purchase the pair of shorts was because the e-consumer lost his shorts at the night beach party and the e-seller is the only available e-seller that delivers within an hour, at such time of the night. In that case, purchasing for urgent need, with no alternatives, would have had more influence than the ethical means of production.

It is important to clarify that the recommendation here is not that the court should move away from using information identifying the goods as a way of determining description, what is being recommended is an extension, similar to that which was done by the CRA 2015 where "main characteristics", a broader and non-technical definition is included in the determination of what qualifies as description. This extension will provide an improved protective environment for both Nigerian e-consumers. "Main characteristics" offers a broader scope for Nigerian e-consumers and with the use of 'main', reduces the risk of e-sellers' mere representations becoming descriptions by limiting this extension to the core elements of the goods. Admittedly, information identifying the goods will also fall under the "main characteristics" umbrella, however this thesis is convinced that "identification" should still remain because there are several cases on identity as an element of description. Finally,

[36] The reasonable man test is a hypothetical legal standard for determining or judging fairness, fair play and equity. This test involves placing a hypothetical unbiased and impartial person within the circumstances of the facts in issue. - Daniel v. FRN (2013) LPELR-22148, 18.

it is important to also mention that descriptive communications dealing with the quality or purpose of the goods being purchased should be exempted from what qualifies as description here because the implied term of purpose and quality covers these elements.[37]

4.2.2: Corresponds with Description.

This leads this thesis to the next issue under this implied term, which is determining the extent to which goods are expected to correspond to an identified description. The FCCPA 2018 requires that goods delivered to e-consumers shall "in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect…"[38] Historically, determining the extent of correspondence needed to satisfy the implied term of description has been a cause of concern for Nigerian contract law jurisprudence over the years. The provisions of the pre-FCCPA 2018 applicable law, s.13 of the SGA 1893, classified the implied term of description as a condition, i.e., an important term that gives buyers the right to reject goods for any breach, regardless of how small and inconsequential the breach is. This was on display in the case of FW Moore & Co Ltd v Landauer & Co.[39] where the court allowed the buyer to reject purchased canned fruits delivered in packs of 24 rather than the agreed packs of 30 even though the sellers delivered the correct quantity. The Nigerian High Court followed suit in Olajide Odunbo Stores and Sawmill Ltd. v. Omotayo. Agencies (Nig) Ltd,[40] and Ogwu v. Leventis Motors Ltd[41] by allowing rejection for minor and inconsequential deviations. These decisions were not surprising because the use of the word 'condition' by s.13 means that the courts have their hands tied and could not go against the express provisions of a statute by allowing rejection for serious deviations.

The requirement that the goods must correspond in all respects with the description has always been an issue in Nigeria. After the inclusion of s.15A into the Sale of Goods Act 1979, Nigerian scholars argued for judicial intervention to remove the requirement that purchased goods must correspond with every minor detail as allowed under s.13 of the SGA 1893.[42]

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[37] Atiyah, Patrick Selim, John Norman Adams, and Hector L. MacQueen. *Sale of Goods.* (Pearson Education, 2005) 158

[38] FCCPA 2018, s.121(3)

[39] (1921) 6 Ll. L. Rep. 384

[40] Olajide Odunbo Stores and Sawmill Ltd. v. Omotayo. Agencies (Nig.) Ltd (1978) 4 C.C.H.C.J. 625.

[41] Ogwu v. Leventis Motors Ltd (n.33) 115

[42] Monye (n.21) p. 173; Sagay I, *Nigerian Law of Contract* (Sweet & Maxwell 1985) 14; and Uvieghara E, *Sale of Goods (and hire purchase) law in* Nigeria (Malthouse Press Ltd; 1996) 36.

However, the courts could not give a different interpretation because of the definitiveness of SGA 1893 that the implied term of description is a condition of a purchase contract. With this, academics started arguing and relying on other common law principles to make their case, [43] with the *de minimis non-curat lex* principle (the de minimis principle) taking a front seat in these arguments. The recommendation to apply the *de minimis* principle to the rigid provisions of s.13 of the SGA can be traced to the decision of the English Queen's Bench in Peter Darlington Partners Limited v. Gosho Company Limited,[44] where the court held the buyers liable for wrongful rejection of a delivery made pursuant to a contract for pure canary seeds. The court noted that – "nothing could be one hundred percent pure." Furthermore, even though the court allowed rejection for minor deviation in Arcos Ltd v EA Ronaasen & Son,[45] Lord Atkins gave a very interesting observation when he stressed the need for caution. He stated that" no doubt there may be microscopic deviations which businessmen and therefore lawyers will ignore". Relying on Atiyah,[46] and several decisions of the English Courts,[47] Monye commented that – "it is quite clearly the law that any non-conformity with contract description is a breach of contract subject to the de minimis principle, and this should be held so."[48] Under this principle, microscopic deviations may be disregarded.[49] Despite these pushbacks and observations, this principle is yet to be applied to any Nigerian case. The reason for this is not a secret. The provision of s.13 of SGA 1893 is clear, the implied term of description is a condition. To move away from this, express legislative or statutory intervention is needed.

As shown above, the FCCPA 2018 implied term of description remains a condition. However, the FCCPA 2018 intervened to correct the above-mentioned issue by limiting the standard of correspondence needed to satisfy the implied term of description to those that "…in all material respects and characteristics correspond to that which [the e-consumer could] expect

[43] Uvieghara (n.42) 36. Monye (n.21), 204
[44] Peter Darlington Partners Limited v. Gosho Company Limited [1964] 1 Lloyd's Rep. 149
[45] Arcos Ltd v EA Ronaasen & Son [1933] 2 WLUK 3
[46] Atiyah et al., (n.37) 126
[47] Darlington v Gosho (n.44) 149 and Arcos Ltd v EA Ronaasen (n.36) 3.
[48] Monye (n.21) 206
[49] Monye (n.21) 207

based on the description". Materiality in contract law denotes crucial importance.[50] For example, a term is 'material' if it is fundamentally important to a contract and goes to its very basis.[51] Another example is that conditions in a contract are referred to as material terms.[52] Therefore, the qualification of 'corresponds' with 'all materials' by the FCCPA 2018, allows for the conclusion that the intention of the FCCPA 2018 is to restrict the interpretation of 'corresponds' to only material deviations, i.e., only important deviations from description would amount to a breach of this implied term.

Materiality, within this context, is a matter of facts that should be determined based what the Act described as - what an ordinary alert e-consumer[53] would reasonably expect considering the description proffered by the e-seller. Limiting the scope of what corresponds and what does not correspond to description is logical as it protects the efficient operation of the digital market. If e-consumers can repudiate purchase contracts for every minor and inconsequential deviation from descriptions, there will be many inefficient contracts in the market. E-sellers would be forced to protect themselves against possible repudiation-related costs, consequently increasing transaction costs for e-consumers.[54]

There are certain challenges with this interpretation of 'all material,' which could significantly affect Nigerian e-consumers. One of these challenges is the risk that this limitation would reduce the level of protection afforded to Nigerian e-consumers, especially because e-consumer contracts are more susceptible to minor deviations. This exposure is because, in the digital market, virtual representation of products, in most cases, is all e-consumers have to make purchase decisions. These visual representations are taken for marketing and advertising purposes to attract e-consumers to them. Prior to delivery, scratches, minor dents, and other minor issues might occur at storage or transportation for delivery. These minor issues would have been noticeable on physical examination by traditional consumers prior to contracting. However, e-consumers contract before physical examination occurs and

[50] Afegbai v. A. G Edo State & Anor (2001) LPELR-193(SC). See also Kuforiji & Anor v. V.Y.B. (Nig.) Ltd (1981) LPELR-1716(SC)
[51] Brian A Blum, 'The Protean Concept of Materiality in Contract Law' (2020) Michigan State Law Review 643.
[52] African Continental Bank Ltd vs. Okonkwo (Unreported) High Court of Bendel State, Akpovi J. Suit No. A/20/80
[53] Chapter 3.4 extensively discussed the ordinary alert consumer standard under the FCCPA 2018.
[54] Tyagi Rajeev K, 'Technological Advances, Transaction Costs, and Consumer Welfare.' (2004) 23(3) Marketing Science, 335-344.

are therefore not afforded this advantage at the pre-contract stage. Therefore, the 'all materials' limitation might leave them stuck with these types of goods. It is suggested that rather than not providing any remedy for minor deviations, they should be treated as a breach of warranty, with alternative remedies introduced for such situations. Remedies like mandating e-sellers to repair or replace the goods could be useful in this case. This remedy is discussed further in 4.5 below.

Another uncertainty hovering around this interpretation of 'all materials' is the determination of what qualifies as minor deviations. Since materiality is a matter of facts, what is minor to an e-consumer or a particular e-contract may be major to another. Therefore, "minor" here would be determined based on the consequences of the deviation-in-issue on an ordinary alert e-consumer. The implied term will achieve efficacy if interpreting bodies consider facts peculiar to each case when determining whether a deviation-in-issue is minor or major. With this, e-consumers would be able to treat deviation as a breach of condition if they reasonably show that a particular deviation is not minor within the context of their purchase and/or the subject matter of the contract. Of course, with reasonability at the core and the reasonable man test as a guiding tool.

With the risk of hidden caveats and information framing obstacles, the FCCPA 2018 offered improved protection by mandating that correspondence should only be determined based on the expectations of the ordinary alert consumer. "Alert" here means that limitations to descriptions that are not ordinarily noticeable would not suffice as a sufficient defence. Furthermore, trying correspondence to the ordinary consumer standard[55] also protects the market functionality. This is because e-consumers' interpretations of descriptions differ and would always be, therefore it is not possible to put a burden on e-sellers to accommodate all possible interpretations and expectations from all e-consumers when offering a product for sale. Determination of correspondence would strictly be on what the hypothetical ordinary consumer (who, as shown in 3.5.2.1, is one with average literacy skills and minimal experience as a consumer of the goods) would expect based on the description provided

[55] The FCCPA 2018 Ordinary Consumer standard is discussed in 3.5.2.1

The examination so far shows that by its very nature, the implied term of description heavily depends on the information provided by e-sellers. S.121(3) itself maintained that the implied term of description is exclusively tied to what an e-consumer is '... to expect based on the description…'. If the goods fit what was described, the obligations under this implied term have been satisfied.[56] The adequacy, sufficiency, genuineness, or fairness of the communication that became description is not the concern of this implied term. As long as the delivered product corresponds with the provided description, a breach of the implied term cannot be claimed. With this reliance on the information from e-sellers, the concerns raised in chapter three resurface. Without adequate information provision rules and information rules recommended in chapter three, the effectiveness of this implied term remains limited, as e-sellers remain in control of the information they provide and how they provide these information, leaving room for manipulation as to what becomes description and what does not. In most cases in the digital market, product description is all e-consumers have to determine whether products fit their interest or not.[57] Allowing e-sellers to provide the information they choose, in the manner they choose, will substantially restrict the extent to which this implied term can protect e-consumers in the country, therefore to improve the effectiveness of this implied term, the recommendations for mandatory information provision in 3.4 is very important, especially because one of the information item (main characteristics) is core to extending the scope of what qualifies as description.

At this point, it is important to consider the implied terms of purpose and quality to understand the protection they provide Nigerian e-consumers. This will help in discovering whether they can fill some of the above-identified gaps of the implied term of description.

4.3: Implied Term of Purpose.

Section 131(2) provides for the implied term of purpose, as follows:

> "if a consumer has specifically informed an undertaking of the particular purpose for which the consumer wishes to acquire any

[56] The consumer would have to rely on the other implied terms under the SGA if his circumstance fits - Monye (n.21). 206. See also Boshali v Allied Commercial Exporters Ltd [1961] 1ANLR 917 P.C.

[57] There are circumstances like digital contents where 'samples' in the form of a trial period are offered to e-consumers. However, digital content is outside the scope of this thesis and would not be considered herein.

> goods, or the use to which the consumer intends to apply those goods, and the undertaking ordinarily offers to supply such goods or acts in a manner consistent with being knowledgeable about the use of these goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated."

The implied term of purpose focuses on ensuring that delivered products are fit for the purpose made known to the seller by the consumer before the conclusion of the contract. Unlike the implied term of description that is a condition, this FCCPA 2018 implied term is a warranty, the breach of which entitles e-consumers to damages. The absence of physical assessment of goods at the pre-contract stage in the digital market contributes to the importance of this implied term for e-consumer protection, particularly as it relates to the intended uses that are outside the usual purpose of the goods being purchased. While the FCCPA 2018 retains the objective of this implied term, its provisions reveal a deviation from the position under the SGA 1893, therefore creating the need for a legal analysis.

According to the provisions of the FCCPA 2018, where a consumer informs the seller of the specific purpose for which he requires the goods and the seller ordinarily supplies such goods or acted in a manner consistent with being knowledgeable about the use of the goods, then it is implied that the seller should supply goods that reasonably meets the disclosed specification of the consumer. Initially, there were concerns that e-sellers would be able to escape liability under the implied term simply because they do not ordinarily sell a particular product. However, these concerns were removed with the Act's provisions that the implied term is activated if e-sellers "act[s] in a manner consistent with being knowledgeable about the use of these goods." The phrase "acts in a manner consistent with being knowledgeable about the use of these goods" bears a semblance to the 'reasonable reliance on the seller's skill and judgement' requirement of the implied term of purpose under the CRA 2015.[58] They both aim to bring sellers' skills and knowledge of the goods into consideration under this implied term. With this similarity and the absence of judicial activity on this provision of the

[58] CRA 2015, s10(4)

FCCPA 2018, the judicial precedents on 'seller's skills and judgement' become relevant and a reasonable reference here.

In the English case of Grant v Australian Knitting Mills Ltd,[59] Lord Wright interpreted "skills and judgement" as sellers' act of simply offering/displaying goods for sale. In rendering his decision, he stated that "... reliance will be in general inferred from the fact that a buyer goes to the shop in the confidence that the tradesman has selected his stock with skill and judgement." This decision and several other threads of authorities[60] are inclined towards an assumption of reliance on e-sellers as soon as they display the subject matter of the contract for sale. It is not unreasonable to expect e-sellers to know the purpose of the goods they are selling, unless in cases where e-consumers' intended purposes are unusual.

Given the similarity of objective with both 'seller's skills and judgement' and 'acts in a manner', it would be effective to employ Lord Wright's ratio in Grant's case to interpret 'acts in a manner' to include e-sellers' action of selecting stocks for display on their website or supplying products post communication of purpose. With this interpretation, e-sellers would be deemed to be acting in a manner consistent with being knowledgeable about the purpose of the goods simply by displaying products for sale on their website. This interpretation would also be useful in the case of express communication, where e-sellers supply goods rather than replying to communications from e-consumers about their intended purpose.[61] This act of supplying qualifies as 'acting in the manner consistent with being knowledgeable' within the confines of s.131(2). This issue, as it relates to express communication, is addressed in detail in 4.3.2 below.[62] It is important to point out that, unlike the CRA 2015's skills and judgement requirement, under the FCCPA 2018, there is no expectation on e-consumers to have relied on the actions of e-sellers. All that needs to be shown is that an e-seller acted in a manner consistent with being knowledgeable about the goods.[63]

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[59] [1936] AC 85 (PC).
[60] Hardwick Game Farm v Suffolk Agricultural Poultry Producers Association [1969] 2 AC 31. p.115.
[61] Communication of purchase and the rationale for this position is discussed extensively in 4.4.2 below.
[62] Please see Chapter 4.3.2.
[63] Corbett Construction Co Ltd v Simplot Chemical Co Ltd [1971] 2 W.W.R. 332. See also Michael Bridge, *Benjamin's Sale of Goods* (2023 Sweet & Maxwell Ltd 12 Edn) 11-054

Looking at the provisions of s.131(2), for a consumer to be protected under this implied term, three conditions must be satisfied: a) a particular purpose must have been expressly communicated to the seller; b) the seller must have received the communication and c) the seller must have confirmed fitness of such goods to the communicated particular purpose, either expressly or by implication.[64]

This thesis proceeds to examine what qualifies as a 'particular purpose'. This will facilitate an understanding of what is covered under the provisions of s.131 (2) and the scope of coverage.

4.3.1: Particular Purpose.

While 'purpose' could include anything regardless of how ordinary they are, it is the word 'particular' that requires keen attention here. 'Particular' within this context means 'specified'.[65] Recognising the risk of limitation, the English court in Kendall v Williams clarified that specification within the context of 'particular' does not operate as and should not be used as an antithesis to a usual purpose of a product.[66] Justifiably so because, in most cases, the particular purpose of a product is, in reality, its usual purpose.[67] Therefore, 'particular purpose' is the purpose communicated either expressly to e-sellers by e-consumers for which the subject matter of the contract is intended to be used or by implication from e-sellers to e-consumers as to what the goods are used for.[68] In Kendall's case, Lord Morris stressed this point when he stated that "there is no magic in the word 'particular' …, a communicated purpose, if stated with reasonably sufficient precision, will be a particular purpose. It will be the given purpose."[69]

By including "suitability for purposes generally intended" as an assessment tool for the FCCPA 2018's implied term of quality, the protection offered by the implied term of purpose are now exclusive to unusual purposes that must be expressly communicated. Claims that purchased goods are unsuitable for their usual purpose are covered under the implied term of quality.

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[64] This includes informing the consumer that the product is fit for the communicated purpose. Monye (n.21) 208.
[65] Henry Kendall & Sons v William Lillico & Sons Ltd (1968) 2 ER 444.
[66] Monye (n.21) 209
[67] For example, a piece of shirt is to be worn. Igweike K, Commercial Law: Sale of Goods, (Jos: Fab Education Books; 1992), p.46.
[68] Uvieghara (n.42) p.38
[69] Kendall v William (n.65) 465

This is an approach similar to the United Kingdom's Sales of Goods Act 1979 and the CRA 2015, where fitness for usual purposes was reserved for the implied term of satisfactory quality.[70] This offers an increased level of protection because, as will be shown under 4.5, the implied term of quality has specific statutory (FCCPA 2018) remedies that are not available for breach of the implied term of purpose.

Judicial precedents have established that bringing the intended purpose to e-sellers' attention is needed to activate the protection of the implied term of purpose. [71] Therefore, this chapter will consider how this communication can be effectively achieved by Nigerian e-consumers, given the peculiarities of the digital market.

4.3.2: Communication of Purpose.

Communication of purpose, which can be oral or in written form, is a matter of facts,[72] when they are expressly made known to the e-seller, they are usually sufficient unless it can be shown that the e-seller was not given a reasonable time to react to the expressly communicated purpose. If facts establish that an intended purpose was brought to the e-seller's knowledge, who, after being given a reasonable time to respond, proceeds to sell without responding, purpose will be presumed to have been communicated, consequently making that communicated purpose, the particular purpose.[73] Any non-fit with this communicated purpose triggers a breach of this implied term.[74]

While communicating purpose might be less difficult in the traditional market, it is much more complicated and tedious in the digital market primarily because of the nature of the market. Traditional consumers are able to approach a salesperson or the seller in-store and communicate their intended purpose. However, communication is not that easy in the digital market, as e-consumers are rarely able to communicate with e-sellers before purchasing. A look at Nigeria's leading e-store, Jumia's communication channel, shows that contact is mostly allowed by the online store on issues involving payment, returns and tracking of

[70] SGA 1979, 14 (2B) and CRA 2015, 9(3)a
[71] Adeola v Henry Stephens and Sons Limited [1975] 7 CCHCJ/1023. See also Plastic Manufacturing Company Limited v Toki of Nigeria Limited (1976) 12 CCHCJ 2701.
[72] Monye (n.21) ibid
[73] Alhaji Auwalu Bura Hassan V. Godwin Obodoeze & Ors (2012) LCN/5254(CA) 14
[74] ibid. 14.

existing orders. When contact is made to communicate purpose, contact agents are unable to assist until an order or a reference number is provided. Communication through comments and public forums would not suffice as adequate communication channels unless facts show that an e-seller has a pattern of responding to questions and purpose queries communicated through them.[75] With these structural barriers, express communication of purpose hardly occurs in the digital market, at least not to the level required to activate the protection of this implied term when seeking to use the subject matter of the contract for an unusual purpose. As shown above, the implied term of purpose is exclusive to unusual purposes which require express communication. If e-consumers are unable to communicate purpose because of the nature of the digital market, then this implied term is of no use to e-consumer protection. As maintained in chapter two and the United Nations's recommendation on e-commerce regulation,[76] e-consumers should not be less protected than traditional consumers simply because they are purchasing online. Therefore, there is a need to explore ways that this implied term can be made effective for e-consumer protection.

4.3.2.1: The Effect of E-consumers Struggle to Communicate Purpose on the Efficacy of the Implied Term of Purpose.

This thesis researched how the United Kingdom and South Africa tackled this communication of purpose issue. However, it found that these jurisdictions also suffer from the same issue. In both jurisdictions, communication is mandatory to activate this implied term, and their e-consumers also struggle to communicate purpose. However, as pointed out in this thesis, these jurisdictions have other protective mechanisms such as the right of cancellation, information provision rules, etc. This mechanism ensures that the negative effects of their e-consumers' struggles to communicate purpose are of no major significance. For example, United Kingdom and South African e-consumers can simply cancel if supplied goods are unfit for their intended purpose,[77] so they see no need to spend cost and effort to communicate their purpose. In the same vein, their regulators are not worried about the inability to communicate purpose given the cushion provided by these alternative mechanisms.

[75] Krebs (n.14), 127

[76] UNCITRAL Model Law on Electronic Commerce (United Nations 1996)., https://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf accessed 22 January 2024

[77] For the United Kingdom, see CCR 2013, s.29. For South Africa, see – ECTA 2002, s.44

However, this is not the same for Nigerian e-consumers who, as shown in chapters three and six, do not have the protection of these alternative mechanisms. While there is a right of cancellation in the FCCPA 2018,[78] it is limited to advanced orders and therefore would not protect within the context here.[79] With the absence of guidance, this thesis will resort to the decisions of the Nigerian courts on pre-contractual communications for help. It will draw an equivalence between the rules on pre-contractual communications and communication of purpose.

In the case of Hassan v Godwin,[80] the Nigerian Court of Appeal held that when important communications related to a contract are proffered and received at the pre-contract stage, and the recipient continues negotiations or enters into the contract without responding to the proffered communication, it is presumed that the communicated information is accepted.[81] Applying this decision to this context, e-consumers only need to communicate purpose through whatever channel the e-seller reasonably receives communication through. The responsibility to respond is on the e-seller, failure of which will activate the protection of the implied term if supplied. With the risk of abuse by e-consumers here, there is a need to apply reasonability when determining qualifying communication channels. In cases where e-sellers have provided channels for communicating purposes (such as a designated email address, a web form, etc), these channels must be used. Where there are no designated channels, qualifying channels should be those where e-sellers are reasonably expected to receive communications, for example, contact webforms, contact emails, phone numbers for consumer queries, social media accounts with a demonstrated history of engaging with e-consumers, etc. Reviews and public forums would not qualify here unless it can be shown that the e-seller has a history of responding to specific product queries on them. In determining whether a channel qualifies, interpreting authorities should consider whether e-consumers can reasonably expect to receive a response to questions asked through such channels.

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[78] FCCPA 2018, s.120

[79] For more on the limitations of the FCCPA 2018 right of cancellation, please see 6.2.1.

[80] Hassan V. Godwin (n.73) 14

[81] ibid. Per Ogunbiyi, J.C.A in delivering his judgement stated as follows: '... failure to reply draws to no other conclusion but must be taken and amounted to acquiescence which would amount to an admission.' (Pg.49-52, Paras. G-E). Similar position, but with less precision, was maintained by Uwaifo JCA (as he then was) in Abajue V. Adikpa (1994) 1 NWLR (Pt 322) 621 at 628.

While there may be questions on the fairness of this rule because it would be hard to definitively confirm that e-sellers received these communications. A reasonable response timeframe should be introduced by the Nigerian legislators to prevent this risk. Twenty-four or forty-eight working hours are reasonable timeframes. With this presumption, e-sellers' failure to respond within the set timeframe would allow an e-consumer-in-issue to make the purchase (of course, within reasonable limits) and claim the protection of the implied term of purpose. While this resolution might appear extreme, and there maybe questions on its fairness to e-sellers, this thesis looks at it as a corrective tool aimed at correcting e-sellers behaviour in the Nigerian digital market. It is expected that after a few cases where sellers are held liable, the market's lack of adequate communication channels will be corrected. To prevent liabilities, e-sellers would have to provide efficient communication channels and respond to communicated purposes timeously. This regulatory approach is not new. Liabilities have been used to correct market behaviours in Nigeria over the years. Regulators are known to take action against key market players to correct sellers' behaviours affecting consumers.[82]

It is also essential to state that with the nature of transacting in the digital market, there is a possibility that purchase contracts might be concluded before e-consumers reasonably have the opportunity to respond to communicated purposes. The protection of this implied term would not cover purchases made without giving the e-seller a reasonable time to respond.

4.3.3: Reforms.

As shown in 4.3.2, communication of purpose remains a difficult task in the digital market, one that impedes the effectiveness of the implied term of purpose for e-consumer protection. As echoed in chapter two, e-consumers should not be less protected because of their proffered medium of contracting, therefore, there is a need for intervention. Using judicial precedents on pre-contractual negotiations and the compelling nature of the FCCPA 2018's provisions on this implied term, the analysis above established the right of e-consumers to communicate purpose. However, there are concerns with the effectiveness of the above

[82] The Federal Competition and Consumer Protection Commission and Krispy Kreme Limited. < https://www.bbc.com/pidgin/tori-45117235> accessed 12 November 2023.

stated position. Nigerian E-consumers should not experience such levels of difficulty to communicate purpose. Research into consumer regulations has shown that when the processes needed to activate consumer protection mechanisms are complicated, difficult, or require high costs (including efforts), consumers neglect such protective mechanisms.[83] Therefore, there is a need to ensure that consumer protection mechanisms are easy to use, with minimal costs. In making this recommendation, this chapter will learn from the Commonwealth Model Law on Electronic Transactions (CMLET 2017).[84] As stated in chapter three, Nigeria is a commonwealth country and was one of the countries who approved the introduction of this model law in 2002 at the Commonwealth Law Ministers and Senior Officials meeting.[85] However, despite this approval, no provision of the model law has been enacted into law in Nigeria. The CMLET 2017 provides that sellers using electronic communication to sell their products (e-sellers) must facilitate prompt, easy and effective consumer communication.[86] To facilitate effectiveness of the FCCPA 2018 implied term of purpose, this chapter recommends that Nigerian e-sellers should be mandated to provide communication channels which allow e-consumers to communicate their intended purpose at the pre-contract stage. Due to the extremity of this recommendation and the potential cost of providing these channels, this chapter will analyse it for efficiency using Ramsay's cost-benefit analysis model.[87]

4.3.3.1 Identify the source of the market failure.

The market failure here is the inability of e-consumers to communicate their purpose, given the nature of the digital market. This inability has rendered ineffective the implied term of purpose for e-consumer protection, leading to the recommendation that Nigerian e-sellers

[83] Faure G and Luth H "Behavioural Economics in Unfair Contract Terms" (2011) 34 Journal of Consumer Policy 337–358.

[84] The Commonwealth Model Law on Electronic Transactions (2017) https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key_reform_pdfs/P15370_8_ROL_Model_Law_Electronic_Transactions.pdf accessed 26 March 2024.

[85] Commonwealth '2002 Meeting of Commonwealth Law Ministers and Senior Officials: Kingstown, St Vincent and the Grenadines, 18–21 November 2002' https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/view/776/776/6053 accessed 26 March 2024.

[86] CMLET 2017, Art 24(1)b

[87] Chapter 1.5 introduced this thesis to this model of analysing consumer protection reforms.

should be mandated to provide adequate communication channels for e-consumers to communicate intended purpose and activate the protection of this implied term.

4.3.3.2: Analysing Alternative Responses.

The second test requires the use of five elements to determine whether there are alternative responses that will harness better market incentives and results at a more affordable cost. The alternative response here is to rely on the position of the Nigerian law on pre-contractual communications as discussed in 4.3.2 and allow e-consumers to communicate through whatever channel e-sellers receive communications through (**the identified alternative response**).

4.4.3.2.1: Benefits to Consumers and Sellers.

The first element of the second test requires policy makers to determine the benefit of the recommended reform to consumer welfare and explore whether the identified alternative response could provide better benefits than the recommended rule. As mentioned in 4.3.2, the identified alternative response brings many uncertainties that do not benefit either Nigerian e-sellers or e-consumers. For e-consumers, it will be hard for them to definitively determine whether the e-seller has received the communicated purpose sent through a selected communication channel, they will also struggle to definitively know when to expect a response. Also, purchasing without receiving a response from e-sellers, though allowed by existing law, carries its' own risks, such as missed communications, undelivered communication, etc.

On the benefit to e-sellers, the consequence of the identified alternative response is that they may miss e-consumers messages communicating purpose, especially if they are to monitor all of their communication channels. There will be a presumption of adequate communication if goods are purchased and supplied post-communication, regardless of whether the e-seller misses the messages or not. In a nutshell, mandating the provision of communication channels increases legal certainty for both e-consumers and e-sellers as its provision means e-consumers are able to definitively know that their purpose has been adequately communicated. Also, e-sellers will be more certain that only communication through the

mandated channel qualifies as adequate communication. E-consumers have to only use this channel to trigger the protection of the implied term of purpose.

4.4.3.2.2: Cost of Formulating the Recommended Reform.

As mentioned in 3.4, without empirical research, it would be hard to definitively determine the cost associated with introducing laws in Nigeria, however, what can be acknowledged is that the delegated legislative powers of the FCCPC could help in reducing these costs given that the commission is empowered to introduce reforms as needed to enforce the provisions of the Act.[88] One of which is the implied term of purpose.

Comparing these costs to the identified alternative response, relying on the identified alternative response would require a lot of amendments to achieve efficiency. There would be a need for regulations on what communication channels are acceptable, the timeframe of response for e-sellers, and other procedural regulations. These will incur costs similar to those required for the recommended reform therefore, this element of the second test evens each other out as the cost for formulating rules mandating the provision of communication channels are similar to those needed to make the alternative response effective.

4.4.3.2.3: Cost of Enforcing the Recommended Rule.

Enforcement costs are in three forms: regulators' enforcement costs, e-sellers' enforcement costs and e-consumers costs when seeking redress and remedies for breach. Regulators' costs for enforcing and ensuring compliance with this reform should be affordable given that they are able to monitor e-seller's websites to ensure compliance. Regulators' costs can also be passed to sellers as the FCCPA 2018 enables the FCCPC to issue fines against erring sellers,[89] these fines can be issued in a way that reflects the cost of enforcement. With these mitigators, regulators' enforcement costs can be controlled. Comparing enforcement costs, the costs associated with the identified alternative response would be higher given its uncertainties. Regulators would have to determine the adequacy of the channel used by the e-consumer, the timeframe given to e-sellers to respond, etc. All of which increases cost.

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[88] FCCPA 2018, s.17(b).
[89] FCCPA 2018, s150 (b)

Regarding e-sellers' costs, providing a communication channel is expected to be cheaper than the identified alternative response. With the alternative response, e-sellers would have to monitor multiple communication channels, and filter the number of communications received through these channels for those communicating purposes. This will require contact agents and information-filtering web tools, all of which will increase costs. Furthermore, the costs associated with providing communication channels can be reduced by setting up product pages with a column that says 'questions about this product' or something similar. This column would be the mandatory communication channel. When any information is entered into this column, the purchase button becomes inactive, and e-consumers are directed to a contact form to communicate their intended purposes. This is a popular e-commerce tool (also known as front-end form input validation) used when registering or filling forms on e-platforms, where unless required information is provided, the 'register', 'submit,' or action button remains inactive. With this, e-consumers who purchase without using communication channels or before receiving responses from the e-sellers can be presumed to have actively waived their protection under the implied term of purpose.

Finally, on e-consumers' cost of seeking remedies and redress. As stated in 4.3.2, the operation of the identified alternative response is filled with uncertainties which would have to be resolved through judicial proceedings, as mentioned in 2.2, access to justice costs are high in Nigeria. With the recommended rule, these costs are removed as there is certainty on which communication channels are adequate and those that are not. There is also certainty on when to expect a response and other procedural steps. Admittedly, e-consumers would still incur enforcement costs if supplied goods are not in line with communicated purposes, however these costs are significantly reduced with the certainty regarding the sufficiency of purposes communicated through the recommended mandatory communication channels.

4.4.3.2.4: Cost associated with the Unintended Side Effects of the Recommended Rule.

On the identified alternative response, the unintended side effect is clear, the difficulty in communicating purpose through the manner allowed by the identified alternative response would affect the effectiveness of the implied term of purpose as fewer e-consumers would be willing to exert the effort needed to communicate purpose. With the recommended

reform, there are concerns that this recommendation could affect the growth of e-commerce in Nigeria. Chapter 1.1 noted that one of the key reasons for the growth of e-commerce is the comfort and flexibility it offers, as e-consumers are able to contract quickly and within the comfort of their home. Therefore, asking them to communicate purposes and wait for a response might lead to adverse effects such as a neglect of the intended purchase as a whole or a preference for traditional commerce where a salesperson can just answer their queries immediately. Chapter 3.2 noted that e-consumers are reluctant to give up these advantages to the extent that they exhibit excessive optimism, neglect self-protection activities (such as information exploration) and steps needed to activate mechanisms in place for their protection just to protect these advantages. In response to this, this thesis argues that the majority of goods purchased in the digital market will be for their usual purposes as covered under the implied term of quality, therefore, the risk posed by this unintended side effect will be controlled. While an argument may be made that since the majority of purchases will fall under the usual purpose, why is this recommendation needed? The answer is that e-consumers who wish to communicate purpose should not be denied the protection of the implied term regardless of the fact that they may be a minority. Furthermore, this risk can be controlled by introducing a mandatory and definite timeframe for e-sellers to respond to communicated purposes.

The analysis of the cost-benefit model above reveals that in comparison to the rules on pre-contractual negotiations, mandating e-sellers to provide communication channels offers a more protective and cost-effective environment for Nigerian e-consumers, especially as it improves the efficacy of the implied term of purpose for them.

So far, the examination of the position of the law on the implied term of purpose to the protection of e-consumers in Nigeria reveals a protective mechanism that works in principle, but is useless in practice given the nature of the digital market. While the decision of the Court of Appeal on pre-contractual communications remains relevant and offers some level of protection, the complications involved in communicating purpose cast doubt on its efficacy. It is in doubt that e-consumers would be willing to jump over these communication hurdles to communicate purpose, especially for low-cost purchases that are popular in the Nigerian digital market. Efficacy and market functionality would be better achieved if e-sellers were

mandated to provide definite channels for communicating purposes taking into consideration the recommendations above. With this, this thesis moves to consider the implied term of quality under the FCCPA 2018.

4.4: Implied Term of Quality.

Section 131(1) of the FCCPA 2018 provides as follows:

> Every consumer has a right to receive goods that
>
> **(a)** are reasonably suitable for the purposes for which they are generally intended;
>
> **(b)** are of good quality, in good working order and free of defects;
>
> **(c)** will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
>
> **(d)** comply with any applicable standards set by industry sector regulators.

The final implied term to be considered in this chapter is the implied term of quality. Just as with the other implied terms, the FCCPA 2018 retained the objective of this implied term, as existing under the SGA 1893, but made notable changes though its provisions. These changes make the implied term clearer and bring it closer to the legislative developments in other jurisdictions.[90] The most notable of these is shifting the standard from the merchantability standard to the good quality standard, one that will be assessed in this sub-chapter. A similar approach was adopted by the United Kingdom when in Sale of Goods Act 1979,[91] it replaced the 'merchantability standard of quality' with the 'satisfactory quality'. The CRA 2015 transposed the same standard for consumer sale of goods contracts.[92] For context, it is

[90] THE FCCPA 2018's implied term of quality bears a striking resemblance to the satisfactory quality introduced by the United Kingdom SGA 1979 (s.14[2B]) and the CRA 2015 (s9[3]a). It is also a transplant of South Africa's implied term of good quality contained in the South African Consumer Protection Act of 2008. s.55 (2) a-d.
[91] SGA 1979, s.14(2B)
[92] CRA 2015, s9(3)a

important to briefly remind this thesis on the merchantability standard of quality under the Nigerian contract law system.

The concept of merchantability under the Nigerian legal system has been a flexible yet complicated one and has been controversial over the years.[93] This controversy can be attributed to the failure of the SGA 1893 to provide guidelines on how to definitively determine this standard. Judicial precedents have also not helped because, rather than providing clear guidance on what this standard is and how to determine it,[94] judges in Nigeria treated merchantability as a question of facts as they appear before them (facts-in-issue).[95] While it is expected that determining any standard of quality in sale of goods contracts will always require reference to the facts before the court, these facts should be examined within the confines of pre-defined parameters with reasonability and the court's sense of justice filling in when there are gaps. Commenting on the uncertainties surrounding the merchantability standard of quality under the Nigerian legal system, Igweike reinstated that this standard remains a mystery that has been treated as a flexible one, which is neither objective nor subjective. He lamented that the failure of the Nigerian courts to provide definite guidelines on how to determine the standard has left academics and market participants in a constant state of confusion.[96] The legal uncertainty surrounding the merchantability standard is the mischief sought to be corrected with the FCCPA 2018 in s.131(1)(a-d), where the Act introduced a list of assessment guidelines to guide interpreting authorities when determining the quality of goods and services in consumer contracts.

As will be shown below, these assessment tools shifted the standard of quality in consumer contracts from merchantability to a new one. For ease of analysis, this thesis will refer to this new standard as the 'good standard of quality. It should be noted that the use of 'good quality' here is only for ease of reference, there is no attempt to insinuate an impression on the

[93] Monye (n. 21) 229.
[94] Atiyah et al (n.37) 163 observed that by not defining 'merchantability,' the 1893 Act left the determination of the implied term of quality entirely to case law.
[95] The Supreme Court in Henry Stephens Engineering Ltd. v. Complete Homes ENT. Ltd (1987) JELR 42698 (SC) 47. See also NBC Ltd v Constance Obi Ngonadi (1985) LPELR-2017(SC). In these cases, the court treated the issue of merchantability as a question of facts, without touching on the definition or even proffering a definite test for determining this standard.
[96] Igweike, (n.67), 60

effectiveness of this standard of quality. The decision to call it 'the good quality standard' is because s.131 (b) and its marginal notes used the phrase "good quality".[97] Establishing what the reasonable person would consider "good" is inherently uncertain and may not be easily determined, hence the need to examine the assessment tools.

Before embarking on this analysis, it is important to state that these assessment tools are similar to assessment tools for determining the satisfactory standard of quality as contained in the United Kingdom's SGA 1979, s14(2B) and CRA 2015, s.9(3). The difference is that the FCCPA 2018 did not include appearance and finish and safety as assessment tools, instead, it included compliance with any regulatory industry standard as an assessment tool. Another interesting observation is that the provisions of s.9(2) of the CRA 2015 mandates that the assessment tools for determining satisfactory quality should be examined within the confines of some factors, which are - description of the goods, the price or other consideration for the goods and finally, all other relevant circumstances (which could include 'public statement about the specific characteristics of the goods made by the seller in advertising or labelling[98]). The FCCPA 2018 did not provide for parameters within which the assessment tools should be examined. Therefore, reasonability and relevant facts are expected to be the parameters to which these assessment tools will be examined. This expectation is because the use of reasonability in assessing quality in sale of goods contracts is not new. As observed by Atiyah[99] and shown in various judicial precedents in Nigeria,[100] the determination of quality (no matter the standard) in sale of goods contracts, has primarily been the court using reasonable-ness and "flexibility to facts" to decide what qualifies as acceptable quality and what does not.[101] In determining reasonableness, the facts and the standard in issue are subjected to the reasonable man test.[102] This test involves using a hypothetical unbiased and impartial person

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[97] The Supreme Court in OSIEC & Anor v. AC & ORS (2010) LPELR-2818(SC). Per Mohammed JSC pronounced as follows "...The marginal note to sections is a good guide to knowing the intention of the law makers. Marginal notes are useful in considering the purpose of a section and the mischief at which it is aimed…" See also Oloyo vs. Alegbe (1983) 2 SCNLR 35/57; O. S. I. E. C. vs. A.C' (2010) 19 NWLR (Pt' 1226) 273/318.

[98] CRA 2015, s.9(5-7)

[99] Canavan, Rick, et al., *Atiyah and Adams' Sale of Goods*, (Pearson Education Limited, 2016) 148

[100] ibid, 21

[101] Adeola v Henry Stephens (n.71); Plastic Manufacturing Company Limited v Toki of Nigeria Limited (n.71) 2701; Olajide Odunbo v. Omotayo (n.31) 625; etc.

[102] The reasonable man test is a hypothetical legal standard for determining or judging fairness, fair play and equity - Daniel v. FRN (2013) LPELR-22148, 18.

with the faculty of mind to discern between truth and falsehood, who is disinterested in the matter, and who would treat all parties fairly to assess the facts in issue, considering all the peculiarities surrounding the assessed facts.[103]

In applying this test to e-consumer contracts, assessment should not be from the perspective of the e-seller or the e-consumer in issue, rather, it should be from the perspective of the hypothetical reasonable man and his expectations on the durability of the goods in issue given the circumstances to which they are supplied. This thesis prefers the use of reasonability over the factors contained in s.9(2) of the CRA 2015. This is because, naturally, reasonability will consider the factors listed in s.9(2) (description, price, pre-contractual information, etc.,). Therefore, it is not limited like that which is contained in the CRA 2015 and it allows a broader scope for determining quality. Despite this preference, the legal certainty offered by the definitiveness of the CRA 2015's provisions cannot be ignored. This definitiveness has its advantages, starting with the fact that it provides interpreting authorities with clear parameters within which they are to operate when applying the assessment tools.[104]

With the understanding that these assessment tools are to be considered using reasonability and flexibility to relevant facts, this thesis moves to analyse them.

4.4.1: Suitability for Purposes Which Goods are Generally Intended.

The first assessment tool under this standard is to consider whether the delivered goods are reasonably suitable for the purposes for which it is generally intended. It is important to remind this thesis that, as stated in 4.3, it is the generally intended purposes, i.e., the usual purpose, of the subject matter of the contract that is relevant under this assessment tool. The difference between this assessment tool and the implied term of purpose under s.131(2) is that the latter is focused on unusual purposes that must be communicated to e-sellers while this assessment tool is focused on purposes that do not need communication as they are the usual purpose of the subject matter of the contract, therefore are implied to have been communicated. This assessment tool is particularly important given the communication

[103] Ibid.

[104] Even though s.9(2)(c) used the words "all the other relevant circumstances (see subsection (5))", all other relevant circumstances is to be limited to those public statement covered under 9(5,6&7)

impediments of the digital market discussed under 4.3.2. With this assessment tool, the generally intended purposes of goods become implied, regardless of whether e-consumers are able to communicate them or not.

One important observation is that the use of "purposes" in s.131(1)(a) corrects the issues created by the case of Plastic Manufacturing Company Limited v Toki of Nigeria Limited[105] regarding goods with multiple usual purposes. In this case, the High Court of Lagos State relied on the English case, Kendall v Lillico,[106] and held that the goods-in-issue are of quality because they can be used for one of the usual purposes, even though they are unfit for other usual purposes. This decision has been criticised on the grounds that e-sellers can easily escape liability under this implied term by simply showing that the goods could be used for one of its' many usual purposes.[107] However, under the new provisions of the FCCPA 2018, the use of "purposes" corrects this issue by mandating that for supplied goods to be of good quality, they must be suitable for all generally intended purposes.

4.4.1.1: Generally Intended Purposes.

This naturally leads this thesis to examine what "generally intended purposes" are. Generally intended purposes are the universally accepted common use of goods. The provision of the FCCPA 2018 on this assessment tool is similar to the first satisfactory quality test under s.14(2B) of the United Kingdom's SGA 1979 and 9(3)(a) of the CRA 2015, which is that supplied goods must be fit "for all the purposes for which goods of that kind are usually supplied." Most goods in the market have a universally accepted purpose. For example, shoes are to be worn, and bulbs are for lighting. These are the generally intended purposes, and it is only reasonable to expect that goods are fit for the purposes they are commonly used for. The provisions of the FCCPA 2018 on this assessment tool introduced reasonableness into the tool, meaning that the generally intended purpose of supplied goods would be one that reasonable ordinary consumers would expect from them. This expectation of the reasonable

[105] (n.71) 2701
[106] Kendall v Lillico (n.65) 444
[107] Sagay (n.42) 27

consumer could be deduced from the goods themselves, the description accompanying them, and, in certain cases, the price of the goods, etc.

One point that requires further attention is the use of "purposes" by the FCCPA 2018. While the extension to purposes helps correct some of the issues that existed with the merchantability standard, as pointed out above, this thesis was concerned that it might have conferred a difficult standard on e-sellers, given that purposes could become very broad with some consumer goods. These concerns led to the need to examine questions on what is covered under the ambit of the "purposes" and the length to which the interpretation of 'purposes' can be taken. The 1979 English SGA experienced the same concern when enacted. The England and Wales High Court in Balmoral Group Ltd v Borealis (UK) Ltd[108] acknowledged that where the goods have a very wide range of possible use, the "all purposes" requirement could be demanding, therefore it recommended caution and reasonableness when interpreting "all purposes" so as to prevent excessiveness. From the academic perspective, it has been suggested by academics that the use of 'purposes' should only cover all normal purposes and not the abnormal ones.[109] This thesis agrees with this as any abnormal purpose has to be communicated under the implied term of purpose.

Another dilemma that may surface is determining whether the suitability for each of the purposes must be uniform and absolute. What happens when a product performs a purpose well but fails to perform another purpose as well? An example is a video game console with internet browsing capabilities. Would the video game console fail this assessment test if its internet browsing capabilities are not as efficient as its gaming capability, given that the FCCPA 2018 mandates suitability for all purposes? This is where "reasonability" becomes useful. When making this assessment, the solution could be to list the purposes for which the product in issue is used in order of priority, with suitability to the most common purpose of goods being assessed taking priority. In the example above, the primary purpose of purchasing a console is to play video games. It remains doubtful that an e-consumer would purchase a video game console as a primary device to browse the internet. Therefore, the

[108] [2006] 2 Lloyd's Rep. 629 at 140

[109] Bridge M.G. (eds), *Benjamin's Sale of Goods* (9th Edn, Sweet & Maxwell 2016) para 11-038; see also Ewan McKendrick (eds), *Goode on Commercial Law* (6th Edn, Penguin Books 2021) para 11.

console cannot be reasonably expected to offer internet browsing capabilities to the standard to which a laptop would, and neither can its internet browsing capabilities be expected to be as efficient as its gaming capabilities. The test should be to consider what 'internet browsing' is and whether the console allows the e-consumer to do so. The degree to which it performs its' internet browsing purpose should not depend on how well the console works for gaming or how well a laptop browses the internet. Furthermore, it is important to remember that if the console's description insinuates that video games can be downloaded from the internet or that music can be streamed through the console, if the browsing capabilities are not efficient enough to provide these functionalities, then the console would fail the good quality test under this assessment tool. This is because while the primary purpose of the console is playing video games, its internet browsing capabilities should be efficient enough to deliver the promised functionalities in its description, maybe not in a way a laptop would, but in a way that allows the console to perform basic internet browsing functionalities included in the console such as downloading games and streaming music from the internet.

The analysis above shows that this assessment tool, especially with the incorporation of reasonableness, improves the standard of protection offered to e-consumers in Nigeria. It ensures that the generally accepted use of goods does not need to be communicated. This plays a key role in reducing the effects of the communication barriers connected to the implied term of purpose, as discussed under 4.3.2.

4.4.2: Good Quality, Good Working Order and Free of Defects.

Another assessment tool under s.131(1) is good quality, good working order and free of defects. This tool consists of three elements for assessing the quality of purchased goods.

Starting with the good quality element of this test, an interesting observation is that the marginal note to s.131.(1) referred to the entire standard of quality under the FCCPA 2018 as "good quality." Therefore, it is reasonable to conclude that the use of 'good quality' here insinuates that supplied goods must comply with all of the assessment tools under s.131(1), i.e., they must be suitable for purposes generally intended, be of good working order, be free of defects, be durable and, where applicable comply with regulatory industry standards. A reasonable conclusion could be that Nigerian legislators were unclear about the arrangement of s.131(1) and that good quality itself is an umbrella standard that encompasses the entire

implied term of quality. A similar comparison would be if the English United Kingdom included "satisfactory quality" as an assessment tool in s.9(3) of CRA 2015 or s.142(b) of the SGA 1979. The overarching standard of quality under these laws is "satisfactory", therefore, the assessment tools in s.9(3) of CRA 2015 and s.142(b) of the SGA 1979 are to be used to determine compliance with this standard quality. The use of "good quality" in s.131(2) should be interpreted to cover all the assessment tools and the need to comply with them.

The other two elements of s.131(1)(b), 'good working order and free of defects', will be considered together as they both deal with the functionality of the goods-in-issue. It is not far-fetched to expect that purchased goods should be of good working order and should be free from defects hence why the inclusion of these elements as assessment tools does not come as a surprise. Historically, even under the merchantability standard of quality, the absence of defects was one of the guidance tools used by the court to determine merchantable goods. For example, in Jackson v Chrysler Acceptances Ltd,[110] the United Kingdom Court of Appeal held a car that requires a new crankshaft, exhaust, radiator and clutch assembly to be defective and not of merchantability quality.

One issue that has been of controversy over time regarding this assessment tool is how to determine the level of defectiveness that would fail this assessment tool. The English court in Falkirk Ltd v Turpie,[111] held that minor defects do not rob a product-in-issue of its quality within the context of the implied term of quality. Even though this decision was given under the old merchantability standard of quality, the FCCPA 2018 appears to agree with the court's decision as it omitted the word 'minor' from s.131(1)(b). This thesis considered whether the omission of 'minor' was an oversight or an intentional neglect by the drafters of the FCCPA 2018. Given that the United Kingdom's satisfactory standard of quality that was introduced by the SGA 1979, four decades before the enactment of the FCCPA 2018, addressed this issue by using the words "freedom from minor defects" when providing for a similar assessment tool,[112] it became apparent that this omission was an intentional one by Nigerian legislators. The favourable attitude of Nigerian courts to the de minimis principle further convinced this

[110] [1978] RTR 474.
[111] Millars of Falkirk Ltd v Turpie [1976] 1 WLUK 749.
[112] SGA 1979, s14(2B) c. Similar provision was transposed into the CRA 2015 s.9(3)c

thesis that the drafters of the FCCPA 2018 do not intend to cover minor defects. By omitting 'minor,' the Act shows that it upholds the de minimis principle and does not care for minor or little things.[113] Chapter 4.2.1 extensively discussed the observation of the FCCPA 2018's de minimis approach to the implied terms. Judicial precedents reveal a pattern where judges have applied the de minimis principle when dealing with contract law issues, therefore there is a risk that with the omission of 'minor' by the FCCPA 2018, goods with minor defects will pass this assessment tool.[114] This position will leave Nigerian e-consumers at a detriment as they will be stuck with products that are not what they purchased but are not defective enough to trigger the protection of the implied term of quality. Some of these minor defects are apparent from context and detectable on examination, which might have led to a decision not to purchase if e-consumers were purchasing in traditional stores. This might explain the decision of the drafters of the FCCPA 2018 to omit minor defects as they expect that consumers would notice them, hence, there is no need to protect them against it. A similar approach was taken by the United Kingdom when it excluded from the scope of the implied term of quality defects that examination ought to reveal when the consumer examines the goods before the contract is made.[115] However, for e-consumers, this is not the case because they contract before physically examining the purchased goods.

If the intention of the drafters of the FCCPA 2018 is to exclude defects detectable on examination at the pre-contract stage, they should have done so. However, they did not, consequently convincing this thesis that their omission of "minor" was done to follow the de minimis principle and exclude minor defects from the umbrella of the implied term of quality. There is a need to extend the scope of this assessment tool to cover minor defects. Failure to do so could lead to a market flooded with minor and cosmetically defective products that do not fully satisfy e-consumers, a situation that could potentially affect the reputation, functionality and development of the market. It is suggested that rather than completely dispensing with minor defects, an amendment to bring "minor" into the assessment tool is recommended. This would protect the functionality of the market as intended by the

[113] This rule translates as "the law cares not for small things." - Jeric Nigeria Ltd. V. Union Bank Nig Plc (2000) 15 NWLR (Pt. 691) 477.See also Atiyah et al., (n.37) 126.
[114] Jeric Nigeria Ltd. v. Union Bank Nig Plc (ibid) 477.
[115] CRA 2015 s.4(b)

lawmakers while also protecting e-consumers by not leaving them stuck with minor and cosmetically defective goods.

Since minor defects are not covered under the assessment tools, pending the inclusion of minor in s.131(c) as recommended above, this thesis will look at how interpreting authorities should determine what qualifies as minor and what does not. Priority will be given to interpretation that protects e-consumers and limits their exposure to the barest minimum. Krebs offered an interesting perspective on determining minor defects within the context of the implied term of quality. In his work, he used a measuring test that he called the "tolerance level of a reasonable person."[116] This test suggests that consumers have a general tolerance limit to defects in goods, and a product is not of bad quality unless such limit has been exceeded. At a starting point, it is key to understand that tolerance in this context is measured using the overall function of the goods in issue. The tolerance test should be determined using the level of deviation from the expected function of the goods in issue. However, caution must be exercised, and any interpreting authority must employ reasonability and relevant facts as filtering mechanisms. In making an assessment under this element, the relative importance of the flawed feature/function to the overall function of the goods should be considered. To give an example, slight scratches on the sole of a purchased pair of boots will be minor as the importance of the flawed feature (the minor scratches) is not material to the overall use of the boots. However, this will not be the case if the purchased boots are a pair of Christian Louboutin boots. E-consumers pay expensive prices for Louboutin boots because of the signature "red bottoms" on the soles. In this case, the overall importance of the flawed feature becomes intolerable and, therefore, is no longer minor for the purpose of the 'free from defect' element of this assessment tool. This approach to determining what is minor or not is in line with a recent consumer case in the Court of Appeal of England and Wales where in assessing whether a purchased yacht is free from defects, Hale L.J noted as follows "in some cases, such as a high-priced quality product, the customer may be entitled to expect that it is free from even minor defects, in other words, perfect or nearly so."[117]

[116] Krebs (n.14) 114.
[117] Clegg v Anderson (t/a Nordic Marine) [2003] 1 All E.R. (Comm) 721 at [72]

4.4.2.1: Reforms.

One impediment identified in this sub-chapter is the Act's neglect of minor issues when determining defectiveness under this assessment tool. Suggestions on how to determine 'minor' were streamlined to ensure that the product and consumer in issue were focused on when making the determination. However, there remains the issue of whether the identified minor issue will qualify under this assessment tool. An amendment of the FCCPA 2018 to bring in "minor" into this assessment tool is recommended, especially with the popularity of the de minimis principle in the Nigerian courts. There is a need to ensure that e-consumers are not stuck with goods that do not fully fit what they purchased.

4.4.3: Durability.

The third assessment tool for determining good quality is durability. Under this assessment tool, purchased products must be durable for a reasonable time within the context of their normal use and circumstances of supply. The CRA 2015 has a similar approach to assessing quality by including durability as an assessment tool in s.9(3). Historically, durability has been a way in which quality is assessed under common law. This can be seen in Mash and Murrell v Joseph I Emmanuel,[118] where the English court, in determining quality under the merchantability standard, held that purchased potatoes must be loaded in 'such a state that they could endure the normal journey and be in a merchantable condition on arrival'.[119] With this, precedents on durability as a quality assessment tool remain relevant here.

Including durability as a tool for assessing quality under the FCCPA 2018 means that purchased goods will not be of good quality if their lifespan is shorter than a reasonable person would expect of such goods and the circumstances to which it was purchased. The inclusion of 'normal use' and 'circumstances of supply' by the FCCPA 2018 means that the court should prioritise these two factors when assessing quality under this assessment tool. For example, the durability expectation of a pair of flip-flop slippers cannot be applied to a sneaker, even though they are both shoes and have the same normal use. Also, the durability expectation of a new pair of winter boots cannot be expected from a thrift-ed second-hand

[118] [1961] 1 All ER 485.
[119] ibid at p. 485.

pair of the same boots as the circumstances of supply differ. One is new, and the other has been previously used.

"Normal use" and "circumstances of supply" must be considered collectively, they are not independent or alternatives. Durability is easily determined when considering the "normal use" of purchased goods. All the court must do is consider the generally acceptable lifespan of the product in determining whether the product-in-issue is durable or not. A product that becomes unusable within a short period of delivery can be said to be of bad quality if products of the same class normally last longer.[120] It is important to mention that if e-consumers use purchased goods outside their 'normal use', a shorter lifespan might not amount to a breach here.

Determining durability gets complicated with 'circumstances of supply' as it is a broad statement that accommodates any factor connected to the contractual relationship. These factors include but are not limited to price, description, pre-contractual information, the manner and condition of purchase, e-sellers' guarantees, etc. A concerning observation here is that a large majority of the 'circumstances of supply' here would be distilled from the purchase contract and the pre-contractual information provided by the e-seller, amongst others. This brings us back to the issues identified in 4.2, which is that Nigerian e-sellers are able to control what qualifies and what does not. Admittedly, descriptions and circumstances of supply cannot be dispensed with as they are the walls to which contractual expectations are formed. However, what must be acknowledged is that with the attitude of the Nigerian legal system to information provision and its dedication to caveat emptor, e-consumers expectations can be manipulated by e-sellers, with such manipulation falling under the umbrella of "circumstances of supply". E-sellers are able to control consumer expectations through provided information and contract terms. The inclusion of "circumstances of supply" in this assessment tool brings caveats provided by e-sellers into the picture when determining durability. For example, an e-seller can explicitly provide that they do not guarantee the durability of a product typically expected to last for ten years for more than three years. Such e-seller would be able to argue that this exemption aligns with the "circumstances of supply"

[120] Crowther v Shannon Motor Co [1975] 1 WLR 30, 33.

factor prioritised under this assessment tool. However, this is where reasonability comes in. The reasonable man test would render such an argument mute, allowing the e-consumer to argue that a reasonable man would reasonably expect such a product to last more than three years. Furthermore, it should be noted if the product is second-hand and the seller supplied it as one, then it would be unreasonable to expect them to last for ten years as that expectation is for when the product in issue is new. To reduce this risk, interpreting authorities must be careful and diligent when applying the reasonable man test to this assessment tool. The imbalance of power between e-consumers and e-sellers should be considered. E-sellers should not be allowed to use contract descriptions to manipulate consumer expectations. Furthermore, the mandatory information provision rules recommended in 3.4 would also help here. Regulating the information that must be provided to e-consumers would help reduce the risks of e-sellers controlling the "circumstances of supply" factor under this assessment tool.

On how long goods should remain of good quality, what is a reasonable time for goods to remain of good quality is a matter of facts that will be determined based on the circumstances of supply and the normal use of the goods. Expensive shoes sold at a price commensurate to their quality should be reasonably expected to last longer than cheaper shoes sold at a lower price. Also, e-sellers' continuing durability obligation does not mean that the goods must remain of the same quality for any length of time, nor should they remain, strictly at the same standard of "good quality" as they were at delivery. The Scottish Sherrif Court took this position in Kelly v Andersons House Furnishers (Inverurie) Ltd[121] when considering whether a purchased piece of furniture is of satisfactory quality. The court held that even though the look of the furniture changed over a period of time, the fact that it continued to be usable and intact means it is of satisfactory quality. The test for interpreting authorities should be that when delivered, are the goods suitable for intended purposes, do they remain suitable for a reasonable time and finally, do they retain their non-functional attributes for a

[121] (2012) GWD 20-422

reasonable time given the normal use of the goods and the circumstances surrounding its supply?[122]

4.4.4: Compliance with Regulatory Industry Standards.

The final assessment tool for determining the good quality standard is how well the product complies with the applicable standards set by industry sector regulators. This tool is relatively straightforward as quality, in Nigeria, is currently assessed through regulated industry standards. Under this tool, purchased food products would not be of good quality if they fail to carry the quality stamp of the National Agency for Food and Drug Administration and Control (NAFDAC) or obtain the agency's certification before being offered to consumers. The straightforwardness of this assessment tool makes assessing compliance to the good quality standard easier as it could be the first stop for interpreting authorities. Failure to comply would automatically trigger a breach of the implied term of quality, consequently activating available remedies rather than going into the details of the other complicated assessment tools discussed in 4.4.1 - 4.4.3, especially with their uncertainties which might require protracted court proceedings, which would increase dispute resolution costs for e-consumers.

Despite this advantage, the effectiveness of this tool for e-consumer protection remains in doubt. This is because many consumer goods are not subject to any industry regulators, consequently excluding them from the umbrella of the industry standard assessment tool. As highlighted in chapter two, 41.2% of transactions in the Nigerian digital market are on electronics and media, 18.9% on fashion, 16.4% on furniture and appliances, 13.3% on food and personal care, and the remaining 10.2% on other goods. Of these groups, only food and personal care have industry regulator standard requirements,[123] meaning they are the only group protected under this assessment tool.

In conclusion, it is without a doubt that the provisions of the FCCPA 2018 on implied contractual terms of description, quality, and purpose improved the level of protection

[122] Canavan Rick *et al* (n.99) 163
[123] Food and Drug Act of 1976, s.8.

afforded to e-consumers in Nigeria. The implied term of description ensures that despite being unable to self-protect by accessing and assessing the product at the time of purchase, e-consumers can expect products that fit the information provided to them at the time of purchase. However, despite the improved protective climate, some issues persist. These issues are associated with how to determine description and the excessive dependence of the implied term on information provided by e-sellers, especially with the popularity of the caveat emptor principle in Nigerian courts. The implied term of purpose makes up for some of the impediments identified under the implied term of description, however, the struggle to communicate purpose in the digital market challenges the effectiveness of this implied term. Recommendations were made for improvements. By moving away from the merchantability standard, the implied term of good quality offered the most improvement of all the above-discussed implied terms as it provided a more definitive and protective atmosphere for e-consumers when assessing quality.

Admittedly, some of the Nigerian e-consumer issues can be corrected and controlled with the afore-discussed implied terms. However, some spillovers and gaps persist due to the absence of mandatory information provision rules. Information provisions rules remain a necessary tool to achieve optimal efficacy of the implied terms. As mentioned in chapter three, it is only when both information provision rules and the implied terms work together that efficacy and adequate e-consumer protection can be achieved. At this point, this chapter moves to consider the FCCPA 2018's statutory remedies for breach of the implied terms.

4.5: Remedies under the FCCPA 2018 for Breach of Implied Terms.

Prior to the enactment of the FCCPA 2018, the only remedies available to purchasers for the breach of the implied terms of description, purpose, and quality were the general contract law remedies of specific performance, repudiation, and damages for breach of warranty.[124] However, the FCCPA 2018 provided for specific additional remedies. This research will not examine the general contract law remedies as they have been extensively researched and analysed in available literature,[125] rather, attention here will be on the statutory remedies

[124] Monye (n.21) 252. See also SGA 1893 s.53, s.12 (1-2).

[125] See Sagay E, (n.42) 618 – 685; Monye F, (n.21) 192 - 267; Kanyip B., *Consumer protection in Nigeria: Law, Theory and Policy* (Reckon Books Limited; Abuja 2005). Mmadu R, 'Application of Implied Terms in the Sale of

introduced by the FCCPA 2018. They will be analysed to determine their adequacy and effectiveness for e-consumer protection in Nigeria. Recommendations will be made as necessary.

4.5.1: Right to Return and Receive a Full Refund.

Section 122 of the FCCPA 2018 introduced the right of return and refund for the breach of any of the implied terms.[126] It provides as follows:

> "122 - In addition to the consumer's right to return unsafe or defective goods under any law or enactment, the consumer may return goods to the supplier and receive a full refund of any consideration paid for those goods, if the supplier has delivered -
> (a) goods intended to satisfy a particular purpose communicated to the supplier and within a reasonable time after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose; or
> (b) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of the goods within a reasonable time after delivery to the consumer for the reason that the goods do not correspond with description, sample or that they are not of the type and quality reasonably contemplated in the sales agreement."

While this statutory remedy increased the level of e-consumer protection in Nigeria, a few concerns must be addressed. The first of which is the use of "a reasonable time" by s.122(a) as the timeframe within which this remedy can be activated. Admittedly, leaving the timeframe as 'reasonable' could benefit e-consumers, especially when consideration is given to latent defects.[127] However, the lack of a definite timeframe creates legal uncertainties on when this right should be exercised. Chapter two extensively discussed the importance of

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Goods Act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts' [2014] 2(2) Journal of Business Law and Ethics, 63-106; and Nwocha, M. E. 'Law of Sale of Goods in Nigeria: Interrogating Key Elements of the Sale of Goods Act Relating to the Rights of Parties to a Sale of Goods Contract. [2018] Beijing Law Review, 9, 201-210.

[126] FCCPA 2018 s.122(a) deals with the breach of the implied term of purpose, while s.122(b) deals with the implied term of description and quality.

[127] In these circumstances, the breaches of the implied terms are only discovered after a period of time.

legal certainty to market operations and consumer protection.[128] As shown above, the Nigerian legal system's approach to the concept of reasonability includes a level of flexibility that makes any action subject to this concept hard to predict. What constitutes 'reasonable time' for a product might not be reasonable for another product. In some cases, goods of the same types might not even have the same reasonability timeframe as the circumstances of supply may differ, consequently changing what is reasonable and what is not for the subject matter of the contract.

This thesis wondered whether the drafters of the FCCPA 2018 might have chosen to use "reasonable timeframe" instead of a definite timeframe because of the number of consumer goods being offered for sale in the digital market. However, it concluded that regardless of the reason, the decision to leave the timeframe flexible and to reasonability will lead to access to justice costs because, in most cases, e-consumers will struggle to definitively predict what timeframe is reasonable and what is not. They will have to approach the court for determination and resolution. This takes away the self-enforcement advantage of the remedy. With the lack of certainty on what the interpreting authority will deem reasonable, e-consumers might even decide not to pursue redress or exercise their rights to this remedy for cost reasons.[129] It gets worse because this might lead to e-sellers acting as private arbitrators and determining what is reasonable and what is not. As shown in 2.2, Nigerian e-sellers are aware of the dispute resolution cost issue.[130] With this knowledge, it is easy for them to exploit the system and the provisions of s.122(a) by simply rejecting a return request on the ground that it was not made within a 'reasonable time', knowing fully well that e-consumers would not be willing to expend the high dispute resolution costs to get a low-cost refund.

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[128] Legal certainty 'is a principle of law, that demands for the law to be clear and precise'. Robert Bradgate, *'Commercial Law'* (3rd Edn, OUP 2003) 5. In Vallejo v Wheeler (1779) 1 COWP 143, 153 Mansfield LJ maintained that: 'in all mercantile transactions the great objective should be certainty. And therefore, it is of more consequence that a rule should be certain than whether the rule is established one way or the other: because speculators in trade then know which ground to go upon'.

[129] The inability to definitively predict dispute resolution cost is one of the reasons why consumers in Nigeria do not pursue remedies in courts. - Usman D., Yaacob N., and Rahman A. (2016). 'An Inquiry on the Affordability of Legal Services and the Appropriateness of the Regular Courts for Consumer Redress in Nigeria' (2016) 7 Beijing Law Review, 83-94, 84

[130] ibid 87

Another concern is the lack of procedural guidelines with the FCCPA 2018 right of returns. There are several unanswered questions and uncertainties on how the remedy would work in practice. For example, what is the timeframe for the refund, who bears the cost of returning the goods, etc. As echoed throughout this thesis, the aim is to recommend protective tools and remedies that e-consumers can exercise with little to no help from the judicial system. Judicial actions should be the last recourse, such as when e-sellers are unwilling to adhere to the remedy or a right granted by a consumer protection framework, not for issues like the determination of the timeframe of which to exercise a right provided for by the Act. The effectiveness of this remedy would be improved if explicit procedural rules on how this remedy operates are introduced in the FCCPA 2018.

4.5.1.1 Reforms.

Even though the FCCPA 2018 referred to this as the right to return, the effect of returning, the consequential refund and its effects on the purchase contract make it analogous to the United Kingdom's CRA 2015 statutory short term right to reject. With the connection between Nigeria contract law and English law and the detailed nature of the CRA 2015's provisions on the short-term right to reject,[131] this chapter will look to the CRA 2015 for guidance on how the FCCPA 2018 right of return can be improved for e-consumer protection. The CRA 2015 right to reject has been lauded as a simple, easy-to-use remedy that instils confidence in consumers.[132] Furthermore, before transposing the right to reject into the CRA 2015, the Law Commission and the Scottish Law Commission jointly relied on empirical research[133] confirming the impact of the right to reject (which at the time was under the Sales of Goods Act 1979) on consumer confidence, particularly because of how easy it is to activate.[134] Since this thesis seeks to make the FCCPA 2018 right of return easier to use, it is a good mechanism to learn from.

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[131] CRA 2015, s.22 and s.20

[132] Giliker, Paula. "The Consumer Rights Act 2015–a Bastion of European Consumer Rights?" (2017) 37(1)Legal Studies, 86.

[133] Davidson Review, Final Report (November 2006), Accessed at www.berr.gov.uk/files/file444583.pdf 26 February 2024.

[134] Law Commission and Scottish Law Commission, *Consumer Remedies for Faulty Goods* (Law Com No 317 and Scottish Law Com No. 216, November 2009) para 1.17-1.18.

Starting with replacing "reasonable time" with a definite timeframe to exercise the right of return, this thesis recommends the same timeframe as the CRA 2015,[135] a timeframe of 30 days from the delivery date or when the goods are delivered in pieces, 30 days from the date of the delivery of the last piece. In situations where additional professional services are required and such professional services are purchased from the e-seller, such as in the case where a wardrobe is purchased, and assembling services are also purchased from the same e-seller, the remedy timeframe should be 30 days from the date of assembling. This is because, the suitability for purpose and quality can only truly be determined after assembling. For goods expected to perish within a period shorter than 30 days, the right to return should run until the day such goods perish.[136] The rationale for recommending 30 days is that 30 days is a reasonable time to discover the goods' quality, its compliance with description, and how fit it is for intended purposes. Furthermore, as will be shown in 4.5.2, the right to repair, replacement and refund has a longer timeframe, therefore if e-consumers miss the timeline here, they are not left without protection. Furthermore, this statutory right does not eradicate the general contract law remedies. E-consumers who miss the timeline can still make claims under the extant remedies.

On the timeframe for refund, the CRA 2015 introduced a maximum refund timeline of 14 days from the date to which the trader agrees that the consumer is entitled to a refund.[137] This thesis recommends the same maximum refund timeline of 14 days from the date when the e-seller receives the returned goods. Futhermore, to stop e-sellers from forcing e-consumers to spend the refund on their website, e-sellers should be mandated to make all refunds to e-consumers' means of payment and not through gift cards, etc.

Finally on the cost of returning the goods, the FCCPA 2018 is silent on who bears the cost of returning the product. The word 'full refund' denotes that e-consumers are entitled to a complete refund of what they paid for the product. However, it is not a 'full refund' if e-consumers have to expend costs in returning the products? E-sellers should bear the consequence of their breach, therefore, an amendment is needed to explicitly provide that e-

[135] CRA 2015, s.22(3)
[136] The CRA 2015 made similar rules in s.22(4).
[137] CRA 2015 s.20(15)

sellers should carry the cost of return. The CRA 2015 took a similar approach in s.20(8). Unless a clear regulation is made on who bears the cost of returns, e-consumers remain at a disadvantage because they are made to expend resources for a breach of the implied term by e-sellers.

While it cannot be denied that the remedy of return and refund offers an improvement to e-consumer protection in Nigeria, the vagueness on how this remedy works or should work leaves a lot of questions unanswered, questions that create uncertainties and might affect its functionality and effectiveness for e-consumer protection.

4.5.2: Repair, Replacement or Refund for Bad Quality Goods.

Another statutory remedy under the FCCPA 2018 is the repair, replacement or refund remedy.[138] The FCCPA in s.132 provides as follows:

> 132(1) In any transaction or agreement pertaining to the supply of goods to a consumer. There is an implied warranty that the goods shall comply with the requirements and standards contemplated in section 131(1) and (2) of this Act.
>
> (2) Within three months after the delivery of any goods to a consumer, the consumer may return the goods to the undertaking that supplied those goods, without penalty and at the undertaking's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 131(2) of this Act and the undertaking shall either repair or replace the failed, unsafe or defective goods or refund to the consumer the price paid by the consumer for the goods.

As shown above, this remedy only applies to the breach of the implied warranty in s.131, which is the implied term of quality. This remedy is better structured than the statutory right to return and receive a refund discussed in 4.5.1. There is clarity on who bears the cost and risk for returning bad quality goods, which is the e-seller.[139] Furthermore, the FCCPA 2018 controlled the risk discussed under the right to return remedy by providing a definite timeframe (three months) for exercising this remedy. Despite these improvements, there are

[138] FCCPA 2018, s.132(2)
[139] ibid

concerns about the procedural steps surrounding the operation and exercise of this remedy, which leaves a few doubts about its effectiveness. This sub-chapter will proceed to look at these concerns and make recommendations for improvement. As done with the right to return remedy and for the same reasons stated above, this thesis will learn from the United Kingdom's CRA 2015 repair and replacement remedy as contained in s.23 of the Act and the final right to reject remedy as contained in s.24 of the Act.

4.5.2.1: Concerns and Recommendations for Reforms.

The first of these is the extent of discretion given to e-sellers by the provisions of the Act. S.132(2) gives e-sellers the exclusive discretion to choose which of the three remedies to activate, consequently leaving e-consumers at the mercy of e-sellers' choices. This thesis considered whether the FCCPA 2018 took this approach to prevent e-consumers from disproportionately cancelling contracts and demanding refunds for breaches that can be remedied or replaced. However, this was discarded with the realisation that the erring party should not be given the discretion to choose the remedy to afford to the aggrieved party. E-sellers are focused on profit-making and would prioritise any choice that achieves this objective rather than one that protects e-consumers' interests. Therefore, an amendment that allows e-consumers to choose which remedy to activate is needed. If the intention of the FCCPA 2018 is to prevent e-consumers' from imposing disproportionate remedies, control mechanisms can be put in place. One of which could be a disproportionate filter that allows e-sellers, acting reasonably, to reject an e-consumer choice of remedy if it is disproportionate or impossible for e-sellers to achieve. The CRA 2015 took a similar approach with repair and replacement remedies when it takes away consumers' ability to insist on repair or replacement when it is impossible or when the consumer choice is disproportionate compared to the alternative.[140] The disproportionate filter would consider the cost of providing the e-consumer preferred remedy versus the cost of the other remedies under s.132(2), taking into account the significance of the breach and the inconvenience that would be caused to the e-consumer by the alternative remedy. For example, if the replacement of a digital camera would be more cost-effective than repairing the camera, the e-consumer

[140] CRA 2015, s.23(3)

should be stopped from insisting on the repair remedy unless there are vital and irreplaceable pictures like that of a recently deceased friend, on the camera which has not been backed up or cannot be retaken thus making 'repair' the most effective choice of remedy.[141]

Another concern is the use of 'either' and 'or' in s.132(2), which communicates that consumers are entitled to only one of the repair, replacement or refund remedies.[142] While this is understandable that the repair or replace remedy alternates each other, the concern here is with the refund remedy. It is reasonable to expect e-sellers to only repair or replace. However, it gets concerning when the Act made the right to refund, which should remain available if either the repair or replacement remedies fail, as an alternative to repair and replacement. Furthermore, the construction of the FCCPA 2018 in s.132(2) also grants e-sellers the right to choose which of the aforestated remedies to afford to e-consumers after receiving e-consumers' notification of a breach. As currently constructed, s.132(2) gives excessive power to e-sellers, a party already at the high end of the imbalance of power scale in the digital market.[143] The CRA 2015 must have noted these risks hence why it separated the repair and replacement remedy from the final right to reject remedy (which is similar to the FCCPA 2018 refund remedy). The final right to reject can be triggered if neither repair nor replacement works or if the repair or replacement is not made within a reasonable time.[144] The CRA 2015 also leaves the decision on which remedy to activate to e-consumers. This is a logical approach as giving the erring party the right to choose the remedy to grant the aggrieved party would be unreasonable.

There is a need to amend the FCCPA 2018's provisions to give e-consumers the right to choose which of the remedies to activate. The Act should also be amended so Nigerian e-consumers can claim the right to refund if the right of repair or replacement fails or if such repair or replacement is not done within the three months' timeframe stated in s.132(2). Without these amendments, there is a possibility that some e-sellers might pick a remedy that does

[141] The United Kingdom took a similar approach in the CRA 2015, s.23 (4)
[142] The Court of Appeal in Edeminam v. Ukime (2007) ALL FWLR (Pt. 396) 763 at 768 paras. G - H (CA) defined "or" as a disjunctive particle used to express an alternative or to give a choice of one among two or more things.
[143] For more on the imbalance of power in the market, please see Wrbka Stefan, *European Consumer Access to Justice Revisited* (Cambridge University Press, 2014).
[144] CRA 2015, s.24(5)

not solve e-consumers' issues, knowing fully well that once that is exercised, the consumers lose their entitlement to another remedy under s.132(2).[145] While an argument can be made that if repair or replacement does not fix the issue, e-consumers remedies of repair, replacement or refund will be refreshed, this is not clear from the way s.132(2) is constructed. If this is the lawmakers' intention, then this needs to be expressly stated. As echoed so far, the less uncertainty in these statutory remedies, the more self-enforceable and effective they will be.

4.6: Conclusion.

This chapter examined one of the alternative mechanisms for correcting uninformed decisions in the Nigerian digital market, the FCCPA 2018's implied term of description with the aim of determining the extent of protection they offered to Nigerian e-consumers. Recognising the uncertainties surrounding these implied terms under the SGA 1893, the FCCPA 2018 introduced what this chapter found to be an improved version of these implied terms. However, despite these improvements, various areas of concern warrant further intervention.

On the implied term of description, it was found that the failure of the FCCPA 2018 to define what qualifies as description means the uncertainties surrounding this issue as existing prior to its enactment persists. Recommendations were made on how to correct these uncertainties. Furthermore, this chapter found a dependence of this implied term on pre-contractual information, leading to the re-echoing of the need for mandatory information provision rules, as recommended in chapter three. It was concluded that controlling the information provided by e-sellers would improve the efficacy of the implied term of description for e-consumers.

On the implied term of purpose, this chapter found that the struggle to communicate purpose in the digital market significantly reduces the effectiveness of this implied term for e-consumer protection. Despite the analysis on e-consumers' right to communicate purpose using the position of the Nigerian legal system on pre-contractual communications, the legal,

[145] Of course, all is not lost here as consumers can simply activate the right to return and receive a full refund under s.122 of the FCCPA 2018 or institute an action for breach of contract.

operational and logistical uncertainties surrounding communication and the determination of what reasonable communication channels are, reduce the potency and efficacy of the implied term. There is a serious doubt that e-consumers would be willing to exert the efforts needed to communicate purpose. Recommendations were made on how the efficiency of this implied term can be improved.

Examination of the implied term of quality revealed that the FCCPA 2018 introduced an increased clarity into the implied term of quality by providing definite assessment tools for determining what qualifies as an acceptable standard of quality. These assessment tools shifted the standard from the merchantability standard existing under the SGA 1893 to a sui generis standard referred to by this thesis as the 'good quality' standard. Using the assessment tools, the good quality standard was scrutinised, and it was revealed that it offers improved protection and legal certainty to e-consumers in Nigeria. Despite these improvements, several loopholes that could affect efficacy were identified, analysed, and reforms were recommended.

Finally, the sufficiency of the FCCPA 2018 statutory remedies available to e-consumers for the breach of these implied terms was analysed. This chapter revealed that while these remedies are welcome improvements, the semantics surrounding their operation create uncertainties about their effectiveness and efficacy. Recommendations on how to correct identified gaps were made. In conclusion, this chapter found that if these recommendations are implemented, the FCCPA 2018's implied terms of description, purpose and quality would help reduce the effects of uninformed purchase decisions in Nigeria and improve the protection afforded to e-consumers in the Nigerian digital market. However, as discussed and recommended in chapter three, this mechanism must operate together with an adequate information regulation regime.

With this in mind, the thesis moves to consider another complementary mechanism, the FCCPA 2018's control of unfair terms in e-consumer contracts, aiming to discover the extent to which it protects Nigerian e-consumers.

CHAPTER FIVE.

E-CONSUMERS AND UNFAIR TERMS.

5.0: Introduction.

Chapter three concluded that although information regulation should be the foundation for e-consumer protection in Nigeria, there is a need for other consumer protection mechanisms to cover and correct the limitations of information regulations as a consumer protection mechanism and also protect Nigerian e-consumers' interests in the digital market. Chapter four considered one of these mechanisms, the implied terms, and this chapter will consider another, the unfair terms regulations.

Chapter two explained that the foundational contract law principles in Nigeria maintain that parties should have the freedom to enter into contractual agreements on voluntarily selected terms, with each contracting party responsible for their individual interests. This could have detrimental effects in contractual relationships where there is an imbalance of bargaining powers or information asymmetry between contracting parties. One of such contracting environment is the B2C e-commerce contractual relationship. Therefore, there is a need to regulate these contractual relationships to ensure fairness in terms.

Before the enactment of the FCCPA 2018, unfair terms regulations in Nigeria were riddled with uncertainties and e-consumers were not adequately protected against e-sellers.[1] However, the enactment of the FCCPA 2018 saw the introduction of new unfair terms regulations. This chapter will scrutinise these new rules to understand how they protect

[1] Several authors commented on the unfair terms rules under the Nigerian legal system and its's detrimental effects on purchasers and consumers in Nigeria - Ilobinso Ihuoma. 'Protecting Consumers in the Online Market from Unfair Contract Terms: The Nigerian Perspective.' (2018) 14(1) Nigerian Journal of Contemporary Law 2. See also Agomo K, 'Exclusion Clauses in Contracts and the Implications for Consumer Protection in the Nigerian Law of Contract' in OO Obilade (eds), *A Blueprint for Nigerian Law* (Faculty of Law University of Lagos, 1995) 4, Monye FN 'The Need to Restrict the Scope of Application of Exemption Clauses' (1991) 2 Justice 19, Ajai W 'Recent Trends in Fundamental Breach and Exclusion Clauses in the Consumer/Commercial Transaction' (1992-93) 16 Journal of Private and Property Law 37, Chibike Amucheazi and Joshua Olewu, 'Consumer Dissatisfaction in E-commerce Transactions: Protecting the Nigerian Consumers' (2023) 44(3) Business Law Review, 117-123; and Monye F., 'An Overview of Consumer Law in Nigeria and Relationship with Laws of Other Countries and Organisations' (2018) 41 Journal of Consumer Policy 383.

Nigerian e-consumers. The peculiarities of the ordinary Nigerian e-consumer and the Nigerian digital market will be factored into this scrutiny, and reforms will be recommended as needed.

5.1: Nigeria and the Regulation of Unfair Terms.

Before examining how unfair terms are regulated in Nigeria, it is worth briefly discussing the importance of regulating them in e-consumer contracts. The popularity of standard form contracts in the B2C digital market exposes e-consumers to the risk of unfair terms.[2] Standardizing contract terms in the digital market makes it possible for the party supplying the terms (e-sellers) to unilaterally determine the contracts' rules and shift risks and unfair conditions to the other party. Available research reveals that most Nigerian e-consumers do not read the terms and conditions presented to them, instead, they simply press "I accept" and continue with their purchasing activities.[3] Even when they do, their choices are limited to either accepting the terms, as presented or walking away from the transaction, as there are hardly any opportunities for pre-contractual negotiations. Furthermore, those who read these terms usually fixate on the core and easily accessible information such as the price, summary descriptions, delivery provisions etc. Admittedly, this issue is not peculiar to Nigerian e-consumers, however, several common law countries, like the United Kingdom, have introduced regulations to reduce the effects of these issues. One of the mitigating mechanisms is to ensure fair terms.[4] Lord Reid, in the English case of Suisse Atlantique Societe d'Armament SA v NV Rotterdamsche Kolen Centrale,[5] summed up this situation perfectly:

> "In the ordinary way the customer has no time to read them, and if he did read them, he would probably not understand them. And if he did understand and object to any of them, he would generally be told he could

[2] Razak, Farihana Abdul, and Zuhairah Ariff Abd Ghadas, 'Standard Form Contracts in Online Business' (2023) 13(2) International Journal of Academic Research in Business and Social Sciences 1002
[3] Ukwueze F., 'Unfair Terms in Consumer Contracts in Nigeria: The Need for Stricter Statutory Control' (2007) 3 Consumer Journal. pp. 41 - 63
[4] CRA 2015, s.62 - 64
[5] [1967] 1 AC 361.

take it or leave it. And if he then went to another supplier, the result would be the same."[6]

Within the Nigerian context, Ukwueze concluded that Nigerian e-consumers are not keen to read terms because of the low quality of terms in the Nigerian digital market. They know that similar terms operate across the market, so they would rather not expend information costs to read and understand terms.[7] This reluctance to expend information costs comes as no surprise given the literacy and infrastructural issues discussed in 2.2 and their effects on Nigerian e-consumers' willingness to incur information costs for low-value consumer goods. With their failure to read terms, they easily fall victim to unfair terms included in their contracts.

Nigerian e-sellers took advantage of these inadequacies of unfair terms regulations to impose their will on e-consumers rather than introducing mutually beneficial terms to both contracting parties.[8] Nigerian e-sellers were hardly worried that the unfairness of their terms would impede their ability to sell products in the market.[9] This is because, they know other e-sellers operate on similar terms and that access to justice is an uphill task for e-consumers. With these market realities, it became crucial to interfere with rules that reduces e-consumers' risk exposure and correct contracts riddled with unfair terms. The FCCPA 2018 made this intervention with its unfair terms regulations.

5.2: The FCCPA 2018's Unfair Terms Regulations.

Regulating unfair contract terms has been an integral part of the Nigerian contract law system way before the enactment of the FCCPA 2018. However, there were two key problems with the pre-FCCPA 2018 unfair terms regulations. Firstly, it was limited to only exemption clauses. This limitation has been criticized[10] with the primary criticism being a logical one – it is not only exemption clauses that can be unfair. Secondly, fairness was determined through the

[6] Similarly, the European Court of Justice in Aziz and Menéndez Álvarez discussed the rationale for the European Union Unfair Terms Directive 1993 (UCTD 1993) and pointed to the imbalance of bargaining power and the difference in knowledge between consumers and sellers when contracting as a key rationale for regulating unfair terms in consumer contracts.

[7] Ukwueze (n.3) 41.

[8] Agomo (n.1) 4. See also Monye (n.1) 19

[9] Ilobinso (n.1) 5

[10] Ilobinso (n.1) 9, Agomo, (n.1) 6, Ajai (n.1) 37, Monye, (Restricting the Scope of Exemption Clauses) (n.1) 19.

fundamental breach test (also known as the rule of law test).[11] This test maintains that an exemption clause, no matter how widely worded, will not protect the party who inserted it where such a party is guilty of breaching a fundamental term or a fundamental breach of the contract.[12] This test has been heavily criticised for being ineffective,[13] particularly because of how inconsistent and chequered the courts have been with its application.[14]

These issues were the mischief sought to be corrected by the FCCPA 2018 when it significantly changed how unfair terms are regulated in Nigeria's consumer contracts. Firstly, it extended the ambit of unfair terms control from exemption clauses to all terms. This extension is a much-needed intervention as it improves the level of protection for Nigerian consumers. Secondly, it replaced the rule of law test with statutory fairness tests, which will be analysed for effectiveness in 5.3 and 5.4 below. This is a welcome intervention given the peculiarities of the digital market. It is important to have in place parameters for determining fairness in e-consumer contracts.[15] While it is admitted that the concept of fairness will remain dynamic and it is impossible to find a satisfactory ground for all e-consumers in the market, to facilitate legal certainty, the law should have clear parameters that protects the average consumer's interests.

In regulating unfair terms, the FCCPA 2018 followed a regulatory approach similar to that used by several advanced jurisdictions such as the United Kingdom and international regulators like the European Union. This approach follows two ways of controlling unfair terms, the first is outrightly prohibiting the inclusion of certain terms in consumer contracts (unconditionally prohibited terms),[16] and the second is a series of tests to examine terms that are not outrightly

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[11] Ezex Courier Services Ltd v Ugwu & Anor (2013) Suit No: CA/L/837/2013.

[12] Ibid. See also Mekwunye v Emirates Airlines (2019) 9 NWLR (Pt 1677) 191 (SC). Ogwu v Leventis [1963] NNLR 115; Iwuoha v Nigerian Railway Corporation (1997) 4 NWLR (Pt 500); International Messenger (Nig.) Ltd v Pegofor Industries Ltd (2005) 5 SCNJ 120.

[13] Agomo, (n.1) 4. See also Agege Charles, Products and the Consumer: Reform of Nigerian Law on Exemption Clauses.' (1989) 32 Howard Law Journal, 803.

[14] Monye conducted a detailed review of the inconsistences in several cases on the interpretation of the fundamental breach rule. – See Monye F., 'A Ray of Hope for Consumers in Nigeria as Exemption Clauses Slide towards Extinction' (2022) 10 International Journal on Consumer Law and Practice, 51 - 55

[15] Chibike Amucheazi and Joshua Olewu, 'Consumer Dissatisfaction in E-commerce Transactions: Protecting the Nigerian Consumers' (2023) 44(3) Business Law Review, 117-123.

[16] FCCPA, s.129. The United Kingdom in CRA 2015 s.31,s.47 and s.57 and s.65 took a similar approach by expressly prohibiting certain types of terms. For sale of goods contracts, the relevant terms are s.21 and s.65. S. 47 applies to purchase of digital contents and s.57 applies to supply of services

prohibited (restricted terms) for fairness, the failure of which makes them prohibited.[17] One notable difference with the FCCPA 2018 is that unlike the CRA 2015, which provided an indicative and non-exhaustive list that "maybe unfair"[18] and needs to be submitted to fairness tests,[19] the FCCPA 2018 did not provide such list. It simply makes all terms that are not outrightly prohibited subject to the fairness test. This is a preferred approach. With a list, there is a risk of limiting the fairness tests to the terms contained in the list because of the popularity of the *expressio unios exclusio alterius* (the express mention of a thing is the exclusion of others) rule of statutory interpretation in Nigeria.[20] This thesis starts by examining the prohibited terms.

Before going into this examination, it is important to remind this thesis that, as mentioned in chapter one, the jurisprudence and scholarship around the FCCPA 2018 is underdeveloped, therefore this chapter maybe limited in its legal analyses of the FCCPA 2018's unfair terms regulations. To bridge this gap, it will make some comparisons, where needed, and learn from the jurisprudence surrounding the unfair terms' regulations under the United Kingdom's CRA 2015,[21] and the European Union's UCTD 1993.[22]

5.2.1: Unconditionally Prohibited Terms.

Control through the prohibition of selected terms allows lawmakers to independently assess the market, express their judgments of contractual fairness and subsequently use the result of their assessment to correct market issues.[23] Outrightly prohibiting contractual terms has been criticised, with arguments of excessive interference and paternalism as the foundation for such criticisms.[24] However, the risk of paternalism should not be a justification for exposing

[17] FCCPA, s.127(1)
[18] CRA 2015, Part 1, Schedule 2.
[19] The CRA 2015 assessment test can be found in s. 62(4) and (6). The UCTD 1993 fairness tests can be found in Art. 3(1).
[20] Military Gov. of Ondo State v. Adewunmi (1988) 3 NWLR. (Pt.82) 280.
[21] 2015, c. 15
[22] 93/13/EEC
[23] Nils Jansen 'Unfair Contract Terms' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018) 950
[24] Nebbia Paolisa, *Unfair Contract Terms in European law: A Study in Comparative and EC* Law (Bloomsbury Publishing, 2007) 1.

weaker contractual parties, such as e-consumers, to risks in a contracting environment.[25] On the other hand, control by prohibiting terms protects the interests of weaker contractual parties[26] and instils certainty into the market.[27] This is because it shows e-sellers and e-consumers terms that are simply not acceptable. It allows e-sellers to avoid such terms and e-consumers to definitively know that the obligations contained in such terms are void and non-binding. With the access to justice issues in Nigeria (as shown in 2.2.6), prohibiting terms gives e-consumers clarity and definitiveness when seeking to enforce their rights and assess the potential success of intended claims. This advantage is not present with other terms. As will be shown when discussing the fairness tests for restricted terms, the subjection to reasonableness, facts and discretionary powers of interpreting authorities confuses e-consumers when assessing the strength of their claims, a process key to the decision to purchase redress.

Similar to the objectives of the prohibited terms under the CRA 2015,[28] the FCCPA 2018's prohibited terms, as contained in s 129, prohibit e-sellers from excluding or restricting liability and obligations imposed on them either by the FCCPA 2018 or any other law.[29] It also prohibits the inclusion of contractual terms that exclude e-sellers from liability for gross negligence, warranties and representations, or that transfer risks of handling goods on display to consumers.[30] However, unlike the CRA 2015, in a bid to reduce the prevalence of payment fraud and identity theft in the country, the FCCPA 2018 added to the prohibited list, the prohibition of any term that expresses an agreement to deposit payment and identity cards (which would include payment and identity information) with e-sellers or the provision of personal identification codes that can be used to access e-consumers' financial or identity

[25] Stănescu-Sas and Andreea-Mădălina., 'Paternalism in Consumer Law' (2021) Challenges of the Knowledge Society, 277-289.
[26] Jansen (n.23) 936
[27] Jansen (n.23) 955.
[28] CRA 2015 – See – s.31 and s.65 for terms prohibited from being included in sale of goods.
[29] Similar provisions can be found in the CRA 2015, s.31 where sellers were prohibited from excluding the implied terms contained in the Act and legal protection in other legislations.
[30] Similar provisions can be found in the CRA 2015, s.65

accounts.[31] These terms are by default void to the extent of their inconsistency with the provisions of s.129 and the obligations contained in them non-binding.[32]

It is also important to mention that s.129(2) adopted the severability approach.[33] This approach protects commercial agreements in the market by ensuring that the inclusion of a prohibited term does not void the entire contract. Rather, what is void is the prohibited term and its effects on the contract and the parties. Other terms remain relevant and binding unless in cases where voiding the prohibited term renders the contract inoperative or defeats the essence of the contract. The sufficiency of this severability approach and the consequence on e-consumers' interests are examined below in 5.5.

Despite the positives of outrightly prohibiting terms, it cannot be denied that it excessively interferes with parties' contracting freedom. Even though e-consumer protection aims to rebalance the imbalance of power between contracting parties in the digital market, the excessive use of a mechanism like prohibiting terms could lead to the issue of paternalism, which would have adverse effects on important e-consumer activities such as e-consumer learning, self-protection, etc.[34] Therefore, there is a need to limit the prohibition of terms to simply indispensable situations, such as terms seeking to exclude e-sellers' legal obligations. With the acknowledgement of this risk, it is no surprise that regulations,[35] including Nigeria's FCCPA 2018, adopt a dual mechanism approach to the control of unfair terms - one which outrightly prohibits certain terms (unconditionally prohibited terms) and another that sets parameters to which terms not unconditionally prohibited (restricted terms) can be assessed for fairness. This thesis moves to consider how restricted terms are assessed for fairness under the Act.

5.2.2: Assessing Restricted Terms for Fairness.

[31] FCCPA, s.129(1)
[32] ibid. s.129(2)
[33] Movsesian L. 'Severability in Statutes and Contracts' (1995) 30 Georgia Law Review, 41.
[34] Windholz E., Consumer Protection, Modern Regulation, Paternalism, and the Nanny State: Understanding the Legitimacy Challenge' (2018) 26(2) Competition and Consumer Law Journal, 182-211.
[35] The United Kingdom and the European Union with the CRA 2015 and UCTD 1993's black and grey lists.

The FCCPA in s.127(1) provides for how restricted terms can be assessed for fairness. It provides as follows:

> "An undertaking shall not-
>
> … (a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price that is manifestly unfair, unreasonable or unjust, or on terms that are unfair unreasonable or unjust;
>
> (b) market any goods or services, or negotiate: enter into or administer a transaction or an agreement for the supply of any goods or services, in a manner that is unfair, unreasonable or unjust; or
>
> … (c) require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer, to waive any rights, assume any obligation or waive any liability of the undertaking, on terms that are unfair, unreasonable or unjust, or impose any term as a condition of entering into a transaction.'

Unlike the definitive nature of the unconditionally prohibited terms, the terms in s.127(1) must be submitted to the fairness test (discussed in 5.3) before they are declared unfair and prohibited. One concern with this provision is that it regulates fairness in price. This could affect the functionality and effective operation of the digital market. Admittedly, the entire premise of controlling the fairness of terms is an intervention into contractual freedom and parties' autonomy, therefore tension between the two (unfair terms regulations versus freedom of contract, caveat emptor and party autonomy)[36] does not come as a surprise and should be expected. However, there is a need to constrain intervention to only the extent needed to protect both e-consumers and the functionality of the digital market. Excessive intervention is detrimental to the digital market and should be avoided as much as possible. Chapter two highlighted the need for e-consumers to have some level of responsibility regarding their protection, particularly as this contributes to consumer learning, and improved

[36] Macdonald E., Atkins R., and Krebs J., 'Unfair terms in Consumer Contracts' in Macdonald E., Atkins R., and Atkins R. (eds) *Koffman & Macdonald's Law of Contract* (Oxford University Press, USA, 2014) 11.14.

self-protection activities. An example of where this is needed is price. Of all the contract terms, the price is one that e-consumers should reasonably be aware of. There is no need to protect them against unfairness in price, at least not in retail B2C consumer goods. Admittedly, in extreme cases, price control can happen with public goods such as electricity, water, access to public parks, toll gates, etc., However, this does not extend to retail consumer goods discussed in this thesis.

Furthermore, in its conceptual form, price is the 'consideration' required from e-consumers to form a valid contract. The issue of consideration in e-consumer contracts is no different from any other contract, which is that adequacy should be left to the contracting parties' discretion.[37] While sufficiency of consideration is often considered, all that is needed to satisfy the sufficiency requirement is passing a valuable right, interest, benefit, detriment or loss.[38] For freedom of contract reasons, interpreting authorities have, and rightfully so, stayed away from intervening in issues related to the adequacy of consideration between contracting parties.[39] As long as it is sufficient,[40] of value in the eye of the law,[41] without elements of fraud, duress and misrepresentation,[42] the courts have refrained and expressed the need to refrain from measuring the comparative value of considerations. A contract is neither unfair nor is a price inadequate because one party got a better bargain than the other.[43] To further show the extent to which the assessment of adequacy in consideration is refrained from under the Nigerian legal system, the requirement of 'value' does not have to be economical. It might even be useless for both parties.[44] All that is needed to satisfy the value requirement is that it must be something the party giving it out owns or is entitled to, and it must be what the other party has agreed to receive.[45]

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[37] African Petroleum Ltd. v. Owodunni (1991) 11-12 SC 56.
[38] Faloughi v. Faloughi (1995)2 NWLR (Pt. 384) 434.
[39] Sagay I, *Nigerian Law of Contract* (Sweet & Maxwell 1985) 72. Royal Exchange Assurance Nig. Ltd. V Aswani Textiles Industries Ltd (1991) 2 NWLR (Pt. 176) 639.
[40] BFI Group Corporation v. B P E (2012) LPELR-9339(SC).
[41] Mohammed v. Mohammed & Anor (2011) LPELR-3729(CA).
[42] Sagay (n.39) 72. S.P.D.C. (Nig.) Ltd V. Allaputa (2005) 9 NWLR (Pt. 931) 475 at 500 Paras. C-D(CA).
[43] Sagay (n.39) 72. See also African Petroleum Ltd. v. Owodunni (n.37) 56.
[44] BFI Group Corporation v. B P E (n.40).
[45] ibid

This thesis agrees that the adequacy of consideration must not be tampered with. Therefore, the functionality of this provision remains unclear because price is and should largely be determined by interactions between the components and elements of supply and demand.[46] The United Kingdom and the European Union, through the CRA 2015 and the UCTD 1993, recognised the importance of not assessing fairness in price when they excluded adequacy of price from their unfair terms regulations.[47] The European Court of Justice (CJEU) also supported this exemption when it held in *Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt*[48] as follows-" the exclusion of a review of contractual terms as to the quality/price ratio of a supply of goods or services [by the Unfair Terms Directive] is explained by the fact that no legal scale or criterion exists that can provide a framework for, and guide, such a review."[49]

Furthermore, while commenting on the initial draft of the European Union's Unfair Terms Directive, Brandner and Ulmer[50] sums up the position of this thesis perfectly. They concluded as follows:

> "In a free-market economy, parties to a contract are free to shape the principal obligations as they see fit. The relationship between the price and the goods or services provided is determined not according to some legal formula but by the mechanisms of the market. Any control by the courts or administrative authorities of the reasonableness or equivalence of this relationship is anathema to the fundamental tenets of a free market economy."[51]

This thesis agrees. The issue of consideration is one that Nigerian e-consumers need to exclusively take responsibility for. The FCCPA 2018's attempt to regulate fairness, or the lack thereof, in price remains impracticable as it would be impossible for an interventionist, be it

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[46] Sono Masazo. 'The Effect of Price Changes on the Demand and Supply of Separable Goods' (1961) 2(3) International Economic Review, p.239-271.
[47] European Union – UCTD 1993, Art. 4(2). United Kingdom – CRA 2015, s.64(1)b
[48] Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt [2014] OJ C 194/5, C-26/13
[49] ibid, 55.
[50] Brandner H. and Ulmer P., 'The Community Directive on Unfair Terms in Consumer Contracts: Some Critical Remarks on the Proposals Submitted by the EC Commission' [1991] 28 Canadian Modern Language Review, 656.
[51] ibid

courts or lawmakers, to pragmatically provide fair and functional parameters for determining the fairness of a price paid for goods.

5.2.2.1: Reform.

This thesis recommends an amendment that removes price, as it relates to its adequacy, from being assessed for fairness. However, this amendment should be restricted and limited to 'price' within the context of consideration for the purchase contract and the adequacy of consideration. The exclusion of price here should be narrowly constructed. The United Kingdom's provision on how price should be excluded from the fairness test fits well with the intention of this recommendation. The CRA 2015 in s.64 excluded "the assessment is of the appropriateness of the price payable under the contract by comparison with the goods…" from any assessment for fairness. This provision is narrowly constructed to exclude only the adequacy of price as a consideration from being assessed for fairness. Everything else related to price can be assessed for farness. For example, terms allowing e-sellers to unilaterally change the price should not be covered under this exclusion and should be subject to the FCCPA 2018 fairness test, as stated below.[52]

Furthermore, this exclusion should not extend to the display and presentation of price. E-sellers must ensure price transparency by following the FCCPA 2018 notification requirements discussed in 5.4 below. E-consumers should be able to take advantage of price transparency and use it to make informed choices by comparing the various prices offered in the market and also shop around for the best deals. Concealment or price deception would make it difficult for e-consumers to assess the market, consequently affecting their decisions. Concealment also goes to the root of freedom of contract as freedom of choice becomes more difficult without the ability to assess price. There is no contractual freedom if e-consumers are not provided with one of the key pieces of information needed to make an informed purchase decision: the price of the goods for sale.[53] The United Kingdom and the European Union recognised this risk and expressly maintained that regardless of the provisions excluding the

[52] The Court of Justice of the European Union took the same view in Nemzeti Fogyasztovedelmi Hatosag v Invitel Tavkozlesi Zrt, when interpreting Art 4(2) of the UCTD 1993 that excluded price from being assessed for fairness. See - Nemzeti Fogyasztovedelmi Hatosag v Invitel Tavkozlesi Zrt, [2012] EUECJ C-472/10 para. 23.
[53] Brandner & Ulmer (n.50) p.656.

adequacy of price from the fairness test, display and presentation of price must comply with the CRA 2015 transparency requirements.[54]

With a firm understanding of the parameters to which fairness can be assessed under the FCCPA 2018, attention will now move to how fairness is assessed. The Act provides four tests to guide interpreting authorities when assessing a term for fairness or lack thereof.

5.3: The FCCPA 2018's Fairness Tests.

This sub-chapter examines the effectiveness of the FCCPA 2018 fairness test for e-consumer protection. The FCCPA 2018 restricted terms would only be prohibited if they are "unfair, unreasonable or unjust." To determine whether a restricted term is unfair, unreasonable or unjust, the Act provides that such term should be submitted to the fairness tests in s.127(2). This subchapter will focus on these fairness tests. S.127(2) provides as follows:

> 'S.127(2) Without limiting the generality of the provision of subsection (I), a transaction or agreement, a term or condition of a transaction or agreement, or a notice to which a term or condition is purportedly subject, is unfair, unreasonable or unjust if:
>
> (a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
>
> (b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
>
> (c) the consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the undertaking that supplied the goods or services concerned, to the detriment of the consumer; or
>
> (d) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer.'

[54] For the European Union UCTD 1993, Art 4(2). For the United Kingdom – CRA 2015, s,64(2).

Before going into the analysis of the fairness tests as contained above, it is important to examine the use of "without limiting the generality of the provisions of subsection (1)" by s.127(2). The Act recognised the risk of limiting the parameters for assessing fairness with certain tests. Therefore, to prevent this risk, it included this phrase to allow interpreting authorities the discretion to employ reasonableness and extend the scope of the tests as needed to achieve the aim of the provision, which is the protection of e-consumers in the country against unfair terms. Fairness, as a concept, is relative and largely depends on the circumstances surrounding supply and the contract. What would pass the fairness test in a purchase contract for one type of goods might not pass in another. Due to the complexities and number of consumer transactions in the digital market, a stringent interpretation of the fairness tests may, in certain circumstances, limit the broad scope of s.127(1)(a) and (c), which will consequently tie the hands of interpreting authorities. This will be detrimental to e-consumer protection. Therefore, the inclusion of the afore-stated phrase by the FCCPA 2018 offers and equips interpreting authorities with the flexibility needed to achieve the intended purpose of the provision.

Furthermore, the popularity of the *expressio unios exclusio alterius* (the express mention of a thing is the exclusion of others) rule of interpretation in Nigeria must have also contributed to the reason why the phrase was included. Using this principle, the Supreme Court, in numerous cases,[55] has maintained that the express listing of specific standards, in this case, the fairness tests, in subsections limit the generality and application of an entire section (including general and wide provisions) to those standards that are listed. Once a list follows a general provision, the general provision shall be construed within the confines of those limiting provisions.[56] The provisions of s.127(1)(a) is one that cover any conceivable term that could ensue in consumer contracts, therefore the afore-quoted - 'without limiting the generality of the provisions of subsection (1)' - is a welcome inclusion to ensuring that any limitations that might ensue from the interpretation and specificity of any of the fairness tests, do not affect the ability of the

[55] A-G. of Bendel State v. Aideyan (1989) 4 NWLR. (Pt.118) 646. See also Ogbuanyinya v. Okuda (1979) 6-9 SC. 32.
[56] Ogbuanyinya v. Okuda (ibid), 38.

court to extend the scope of the fairness test to the extent needed to protect e-consumer interests and ensure that terms presented to them are not unfair.

However, it is key to remember that the phrase above does not mean that interpreting authorities can extend the examination of fairness beyond the scope of the fairness tests by creating new tests. What is allowed here is a broad interpretation and application of the fairness tests, anything outside the scope of these tools is excluded. Also, this broad and extended interpretation must be in context of the contract-in-issue. As echoed by the UCTD 1993, in determining whether a term is fair or not, the nature of the goods, the circumstances connected to the contract's conclusion and all the terms of the contract should be considered.[57] A term should not be examined for fairness in isolation.[58] Before going into the analysis of these tests, it is important to state that these tests are yet to be tested in Nigerian courts and have also not been subject to much academic analysis. Therefore, equivalent provisions under the CRA 2015 and the UCTD 1993 and their interpretations will be comparatively analysed, where possible, to get insights and guidance.

Section 127(2) provides that a term, condition or notice is unfair, unreasonable or unjust if it satisfies at least one of the following four tests:

a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied (Excessively One-sided);
b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable (Adverse and Inequitable);
c) the consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the seller (Deceptive Practices) or ;
d) the fact, nature and effect of the term was not drawn to the attention of the consumer (Attention and Notification).

[57] UCTD 1993, Art 4(1)
[58] Radlinger and Radlingerova (Judgment) [2016] EUECJ C-377/14: 283

It is important to mention that the use of "or" in s.127(2) means that a term does not need to fail all the fairness tests for it to be unfair, unfairness is triggered once one of these tests is failed.

5.3.1: Excessively One-sided.

The first fairness test considers whether a term-in-issue is excessively one-sided in favour of any person other than consumers or other persons to whom the goods are to be supplied. In making this assessment, three conditions must be satisfied. The first condition is that the term must be one-sided. Most terms are expected to be one-sided, i.e., conferring unilateral rights, obligations or limitations on a party. For example, the term obligating e-consumers to pay for purchased goods is one-sided, as the obligation conferred by the term only applies to the e-consumer. The second condition is that the term is 'excessively' one-sided. It is not the one-sidedness of a term that makes it unfair under the FCCPA 2018 - such term must have been excessive. A one-sided term is excessive when it confers a unilateral obligation that is so untoward and immoderate that it becomes unfair to the consumer. This standard is not easily determined as the word 'excessive' is relative and heavily depends on facts-in-issue. With the awareness of this relativity, there is a need to refrain from providing a definite test for making this determination. Instead, interpreting authorities should employ reasonableness and factual flexibility in determining compliance. The content of the entire contract, the circumstances and facts of the transaction, the power dynamics between the contracting parties, etc., become relevant in determining compliance or non-compliance with this fairness test. The recommendations in 5.3.1.1 will offer guidance on how excessiveness can be determined.

The third condition is that the excessively one-sided term must not operate in favour of anyone other than the consumer. This aspect of the test recognised the power imbalance within contracting parties and sought to reduce it by allowing consumers to benefit from excessively one-sided terms that are in their favour. The logic for this is clear - e-sellers provide terms, and if an e-seller, who is the powerful contracting party, decides to provide a term that is excessively beneficial to e-consumers, the law should not obstruct activities that further consumers' interests. In assessing compliance here, the benefit must not only accrue in theory but also practically end with consumers. For example, a liability-free cancellation term which

allows e-consumers to exit purchase contracts within a given period of entering into them without the obligation to state the reason for cancellation should not fail this fairness test, although it is excessively one-sided to e-consumers. This is because, the end-beneficiaries are e-consumers. However, a term that allows both e-consumers and the e-seller to cancel the contract subject to the payment of cancellation fees, which are lower for e-consumers, should fail this test even though the cancellation fee is lower for e-consumers. This is because, e-consumers are more likely to cancel purchase contracts than e-sellers.[59] Also, when e-sellers cancel, they distribute their cancellation cost to other e-consumers,[60] whereas e-consumers bear their cancellation costs individually. Therefore, even though this term offers e-consumers lower cancellation fees, in the practical sense, the end beneficiary is more likely to be e-sellers than the e-consumers. A term favouring e-consumers would fail this fairness test, if facts show that the likelihood of such benefit is less than the benefit accruing to e-sellers under the same term or a rebalancing term in the contract. Including the end-beneficiary factor reduces manipulation and increases the effectiveness of this fairness test for e-consumer protection.

5.3.1.1: Recommendations.

While this thesis is generally satisfied with the FCCPA 2018's provision on this fairness test, its primary concern is how the standard set by the test will be determined. This concern is because determining "excessive" is relative and varies based on the nature of the term, the circumstances of supply and the goods being purchased. This fairness test and its objective are similar to the significant imbalance fairness test of the UCTD 1993[61] and the CRA 2015.[62] The FCCPA 2018, the CRA 2015, and the UCTD 1993 appear to all agree that the intention here is to reduce asymmetries between consumers' and sellers' rights and obligations in terms. The difference is the use of "significant" and "excessive." However, this difference is not of major concern here because determining what is "excessive" will equally be as challenging as determining what is "significant." With this common problem, this thesis will look at the judicial interpretations given to the CRA 2015 and UCTD 1993's significant imbalance fairness

[59] E-sellers' cancellation Costs are reflected in prices given to all consumers - Inderst Roman and Marco Ottaviani. 'Sales Talk, Cancellation Terms and the Role of Consumer Protection' (2013) 80(3) Review of Economic Studies 1002.
[60] *Ibid,* 1007
[61] UCTD 1993, Art.3
[62] CRA 2015, s.62(4)

test as a guide for recommending how the excessively one-sided test should be interpreted here.

According to the European Commission in the Unfair Terms Directive Guidance document (EC Unfair Terms Guidance),[63] the "primary yardstick" for determining the significant imbalance fairness test is the "deviation from existing rule of law" interpretation used by the CJEU in Aziz v Caixa d'Estalvis de Catalunya (the Aziz case).[64] Under this interpretation, a term is significantly imbalanced if it deviates from a rule of law that would apply to the contract if the term does not exist. An example is a term that waives e-sellers' liability for damages or loss due to delayed delivery of the purchased goods in return for free delivery. This term is a deviation from the default legal rule in Nigeria, which states that the party responsible for the delay in delivery is liable for any damages or loss to the goods during the delay period.[65] Such term would be one-sided for deviating from the default rule aimed at balancing the interests of contracting parties by ensuring that e-sellers do not exploit the position of the law that risk is transferred to the buyer once title is transferred. [66] In making its decision, the CJEU, in Aziz's case,[67] maintained that legal rules and remedies are benchmarks for determining significant imbalance and that courts should examine whether there are "rules of [national] law that would apply in the absence of an agreement by the parties in that regard" and then compare the term being assessed for fairness with these rules to determine the extent to which the term places the consumer in a legal situation less favourable than that provided for by the legal rules.[68] Significant deviation should amount to unfairness.

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[63] European Commission added font and visual presentation as a way of assessing transparency in notices and terms – European Commission, *Commission Notice Guidance on the Interpretation and Application of Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts* (2019/C 323/04) (27 September 2019) – < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0927(01) > accessed 19 March 2024 para. 3.3.2

[64] (2013) Case C-415/11, 68

[65] Blackstone Crushing Co. Ltd v. Samoba (Nig) Ltd (2020) LPELR-51129(CA) Pp 38 - 43 Paras E - D. See also Jessah J., 'E-Commerce in Nigeria: Liability for Loss or Damage to Goods Supplied by a Seller Pursuant to an Electronic Contract' [2020] 1(3) International Journal of Comparative Law and Legal Philosophy, 111.

[66] Krebs made a similar assessment within the context of 'significant imbalance' as a fairness test under the United Kingdom's Consumer Rights Act 2015. Krebs. J, 'Online Contracting and the Supply of Digital Content to Consumers' (PhD Thesis, Swansea University, 2018). 181.

[67] (2013) Case C-415/11, 68

[68] Ibid, para 68. The UK Supreme court also applied this rule when considering significant imbalance under the CRA 2015. See El Makdessi v Cavendish Square Holdings BV [2015] UKSC 67

This interpretation would be an effective way to interpret the excessively one-sided fairness test as it allows the evaluation of the level to which a contract term places e-consumers in a position less favourable than where the law places them. While this interpretation has its positives, it is limited in scope because it can only be used when there are legal rules on the term being assessed for fairness.[69] The European Commission also recognised this limitation and stated that when there are no default rules of law, interpreting authorities should use supplementary interpretations and points of reference, such as - fair and equitable market practices or by comparing the rights and obligations of the parties under the term-in-issue, taking into account the nature of the contract and other related contract terms.[70]

Digging further into these supplementary interpretation guides, one way the United Kingdom House of Lords have assessed fairness is to consider whether the term in issue excessively tilts the rights and obligations of the parties in favour of the seller. The court in Fair Trading v First National Bank PLC[71] held that a term is significantly imbalanced if:

> "… it is so weighted in favour of the supplier as to tilt the parties' rights and obligations under the contract significantly in his favour. This may be by the granting to the supplier of a beneficial option or discretion or power, or by the imposing on the consumer of a disadvantageous burden or risk or duty."[72]

An example would be a term that states that if e-consumers miss delivery of the goods, they must pay an exorbitant re-delivery fee, without a similar term imposing comparable penalties on e-sellers for late delivery.

Another supplementary guide could be one used by the United Kingdom Supreme Court in El Makdessi v Cavendish Square Holdings BV,[73] where the court examined the whole contract to check whether there is a rebalancing provision that removes the imbalance in a term. A similar approach can be taken in Nigeria. Interpreting authorities should look into the contractual

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[69] Willett Chris, *Fairness in Consumer Contracts: The Case of Unfair Terms* (Routledge, 2016) 47.
[70] EC Unfair Terms Guidance (n.63) para 3.3.2.
[71] [2001] UKHL 52
[72] ibid, para 17
[73] - Where it held that a term charging for overstaying is not significantly imbalanced as, in return, it allowed the consumer to park free for two hours and the overstaying charges were not disproportionately high - [2015] UKSC 67 at 212

obligations conferred by the term-in-issue and assess whether they create an undue disadvantage to e-consumers without rebalancing rights and obligations in other terms of the contract. For example, a one-sided term obligating the e-consumers to pay for the goods, should also have a rebalancing clause obligating the e-seller to supply the goods.

This chapter recommends that, when interpreting the FCCPA 2018 provisions on this fairness test, Nigeria courts should adopt the same interpretation approach taken by the European Commission in the UCTD Guidance document. Deviation from default rules of law should be the primary yardstick. When its application is impossible, supplementary interpretation guides such as those discussed above can kick in. This approach will reduce legal uncertainties as interpretation is not just left to the discretion of the courts, e-consumers are clear on the order of interpretation. Furthermore, supplementary interpretation guides should not be limited to the recommendations made in this sub-chapter. The court should use facts-in-issue to bring in other reasonable interpretations.

It is also important not to apply any interpretation tied to the commercial value of the goods being purchased or the consideration paid for the contract. As discussed above, it is impracticable to determine fairness based on the adequacy, or the lack thereof, of consideration. For example, offering a product at a low price does not remove the excessiveness of a one-sided term that takes away e-consumers' rights to damages in exchange for that low price. The United Kingdom Competition and Markets Authority (CMA) took a similar position and maintained that supplying goods at a low price does not remove or reduce the effect of a detrimental imbalance in a contract term.[74]

Regarding implementation, one of the functions of the FCCPC is to issue guidelines on how the provisions of the FCCPA 2018 could be maximised for e-consumer protection.[75] Guidance documents have key roles to play in the effective application of legal frameworks as they offer

[74] Competition and Markets Authority *Guidance on the unfair terms provisions in the Consumer Rights Act 2015* (31 July 2015) - https://assets.publishing.service.gov.uk/media/5a7f8b58ed915d74e33f716e/Unfair_Terms_Main_Guidance.pdf (CMA Unfair Terms Guidance) accessed 22 April 2024, para 2.15

[75] FCCPA 2018, s.17(b).

clarity to stakeholders seeking to implement, apply or use a given legislation.[76] The FCCPC should introduce guidance documents with these recommendations. By doing this, interpreting authorities will be able to rely on them.

5.3.2: Adverse and Inequitable.

The second fairness test assesses whether a term-in-issue is so adverse to the consumer that it becomes inequitable. With the absence of judicial precedents on how to determine "adverse" within this context, this chapter will refer to the literal meaning of adverse, which means unfavourable. However, it is not the adverseness of a term that makes it unfair under this test, it is when the level of adverse-ness is so high that it makes such term "inequitable." Therefore, the operative word to focus on here is "inequitable".

The Nigerian Court of Appeal in Tonique Oil Services Ltd v Virgin Forest Energy Ltd[77] defined "inequitable and unconscionable term" as – "…one that is characterised by unfairness and lack of honesty in terms and conditions of the bargain, portraying that one party had taken advantage of the other."[78] Also, in Brandscapital Ltd V. Chief Adebola Disu-Ige & Ors, the Court also addressed what qualifies as an inequitable bargain and held as follows:

> "…the question to ask when examining inequitable bargain is whether the contract in issue is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other."[79]

The nature of the digital market exposes e-consumers to inequitable terms given that terms are standard in nature, and in comparison to e-sellers, e-consumers are weaker contracting parties, particularly within the context of their bargaining powers and information

[76] Van Dam, Clara, 'Guidance documents of the European Commission: a Typology to Trace the Effects in the National Legal Order' (2017) 10(2) Review of European Administrative Law, 75-91.
[77] (2021)LCN/15641(CA)
[78] *ibid*. Per Balkisu Bello Aliyu, JCA (Pp 26 - 26 Paras C - E)
[79] (2018) LPELR-44812.

imbalances.[80] The UCTD 1993 acknowledged the need to consider parties' bargaining positions when determining equitability and fairness of a consumer contract term. It maintained that interpreting authorities should assess whether in including a term-in-issue, the seller dealt fairly with his consumers and considered their legitimate interests.[81] The equitability issue also arose in the Aziz's case.[82] The court gave a decision similar to that of the Nigerian Court of Appeal in Brandscapital Ltd V. Chief Adebola Disu-Ige & Ors[83] and held that:

> "… the [national court] must assess for those purposes whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations."[84]

Therefore, in applying this test, interpreting authorities should consider whether the term is one that a reasonable person would have agreed to if he was negotiating in person and if he had the power and ability to. It is also important to state that e-consumers' awareness of such term does not cure a term of its unfairness given that e-consumers are not able to negotiate terms in the digital market, therefore knowledge does not translate to an ability to negotiate. Even though an e-consumer is aware of the term and clicks "I accept", it does not mean such e-consumer would reasonably agree to the term if he had the power to push against it. The CMA acknowledged this risk when considering the fairness test under the CRA 2015. In their words,

> "In our view, individual consumers rarely in practice have the required knowledge and bargaining power to ensure that contractual negotiations involving them are effectively conducted on equal terms."[85]

This thesis agrees and recommends that interpreting authorities take cognisance of this gap when assessing fairness under this fairness test. For efficacy, Nigerian interpreting authorities

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[80] Nils Jansen (n.23) 936. See also Collins, H., *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law* (Volume 15, Kluwer Law International BV, 2008).
[81] UCTD 1993, recital 16
[82] Aziz v Caixa d'Estalvis de Catalunya (n.64)
[83] (2018) LPELR-44812
[84] Aziz v Caixa d'Estalvis de Catalunya (n.64)
[85] CMA Unfair Terms Guidance (n.74) - Para 230

should use an approach similar to that by the United Kingdom's Court of Appeal in Office of Fair-Trading v Foxtons Ltd,[86] when in determining fairness under the Unfair Terms in Consumer Contracts Regulations 1999, the court used a correctly defined hypothetical reasonable consumer rather than the consumer in Issue.[87]

Under this inequitable and adverse test, contractual terms containing elements of fraud, undue duress, extortion,[88] and other deceptive practices should qualify as taking advantage of the consumer, which will consequently fail this test. Also, terms that take away the advantages of e-consumers' peculiarities will fail this test. For example, a class action waiver clause would likely be inequitable as it restricts e-consumers ability to seek redress jointly. As mentioned in 2.2, Nigerian e-sellers are aware of the high access to justice costs. A class action waiver clause removes e-consumers' ability to pool resources together to seek justice, consequently reducing the likelihood of e-consumers' seeking redress as individuals are not likely to expend expensive costs for low-value consumer goods. Finally, price and consideration must not be used as a measuring stick when determining fairness under this fairness test. An e-seller selling for a price higher than market value should not be considered as 'taking advantage of' e-consumers unless the e-seller uses a term to bypass price control laws.

In conclusion, this sub-chapter agrees that this fairness test improves e-consumer protection in Nigeria; therefore, it would not make any recommendations for reform. This is because, by including equitability as a fairness standard, and with the judicial precedents on what qualifies as "inequitable bargain", the FCCPA 2018 ensured that the fact that e-consumer contracts are not individually negotiated will be considered when determining the fairness of a term-in-issue. This creates better protection for Nigerian e-consumers, who can now seek protection under unfair terms regulations when their e-sellers' standard terms are not what they would reasonably be expected to agree to.

5.3.3: False, Deceptive and Misleading.

[86] [2009] EWCA Civ 288
[87] *ibid* at para 47
[88] The Port Caledonia and The Anna [1903] P. 184, 190.

The third fairness test assesses whether in agreeing to the term, the consumer relied on a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the seller which ends up causing detriment to the consumer. Essentially, this fairness test brings into the determination of fairness, pre-contractual activities, and the fraudulent misrepresentation rules. Before a term is declared unfair by this test, three conditions must exist –

a) there must be a false, misleading, or deceptive representation or statement of opinion,

b) the consumer must have relied on it, and

c) the resulting term must have caused detriment to the consumer.

This sub-chapter proceeds to individually examine these conditions.

5.3.3.1: False, Misleading and Deceptive Representation.

The Supreme Court of Nigeria in Abba v. Abba Aji & Ors[89] defined false, misleading and deceptive representation as –

> "a false or misleading assertion about something usually with the intent to deceive, the words denote not just written or spoken words, but also any other conduct that amounts to a false assertion."

It also reaffirmed an earlier decision, Afegbai v. A.G. Edo State,[90] and pronounced that only material representation qualifies as misleading and fraudulent. The Supreme Court in Kuforiji & Anor v. V.Y.B. (NIG) LTD (the Kuforiji case),[91] provided some guidance on what qualifies as "material misrepresentation", which it defined as any representation that "has a tendency to induce the representee [consumer] to alter his or her position, such as by entering into the contract which in fact he entered into." Essentially, this definition tied materiality to the effect of the representation on the representee (within this context, the consumer). This definition helps e-consumers because marketing materials in the digital market are filled with various

[89] (2022) LPELR-56592(SC)
[90] (2001) 7 SCNJ PAGE 438 AT 447
[91] (1981) LPELR-1716(SC)

representations, some of which are serious statements and others mere puffs,[92] however with framing tactics, e-sellers are able to make any statement impactful on consumer decision-making. Therefore, tying materiality to the effect on the consumer, as done by the court in Kuforiji's case, is a welcome interpretation as it focuses on the consumer rather than the representation itself. The court will be able to look at the representation and reasonably determine the effect it has on the consumer-in-issue. With this, what will be a misleading representation for a consumer might not be for another. For example, a false representation of the measurement of goods smaller than advertised would be material for e-consumers, whereas it might not be for traditional consumers if the difference in size is apparent and can be detected on physical examination. This interpretation improves e-consumer protection as their peculiarities will be addressed when determining fairness under this test.

The scope of this fairness test was also extended beyond the representations and statements of opinions made by e-sellers themselves. It was extended to representations and statements of opinion made on behalf of e-sellers by their agents, such as advertising agencies, social media influencers, etc. This inclusion takes care of issues currently arising from the use of social media influencers to market online goods in Nigeria. Despite including product links in their posts, influencers preface their marketing posts with disclaimers stating that opinions are personal and do not reflect those of the e-sellers. This excludes e-sellers from any liability ensuing the influencers' opinions. Under this test, such caveats would not protect e-sellers from liability, regardless of the contracts between influencers and e-sellers, which usually contain clauses exempting e-sellers from liabilities arising from influencers' opinions.

5.3.3.2: Reliance.

The second condition under this test is that the consumer-in-issue must have relied on the false, misleading, or deceptive representation or statement of opinion when agreeing to the term being assessed for fairness. Reliance (also referred to as inducement) is a requirement

[92] Ivan L Preston, *Great American Blow-up: Puffery in Advertising and Selling* (2nd edn, University of Wisconsin Press 1996) 20.

for successful misrepresentation claims under Nigerian jurisprudence.[93] Under Nigerian law, a representee (consumer) cannot claim reliance on misrepresentations if –

a) he is unaware that the representation was made,[94]
b) if he knew it was false,[95] and
c) even though he is aware, he is not induced by it.[96]

The exclusions in (a) and (b) are reasonable given that it would be unreasonable for e-consumers to claim that they relied on statements of opinions and/or representation that are unknown to them at the time of agreeing to the term, neither is it reasonable for e-consumers to seek the protection of this fairness test for representations they know are false at the time of agreeing to a term-in-issue. An example is the popular, "RedBull gives you wings" advertisement used by the RedBull brand, a claim that a consumer relies on this advert and believes the drink will give him actual wings would fail. Regarding c), the Supreme Court in Kuforiji's case stated that "entering into the contract" qualifies as "inducement" (reliance).[97] Therefore, the reliance requirement under this test would be satisfied by simply showing that the consumer agreed to the term, i.e., purchased the goods. This is a helpful interpretation because it places the minimum standard on "reliance". Therefore, it can be reasonably concluded that a representation or statement of opinion is relied on when an e-consumer purchases after seeing or receiving them. Of course, within reasonable limits.

5.3.3.3: Detriment.

One key concern with this fairness test is the inclusion of the phrase - "to the detriment of the consumer." The Dictionary of Law defines detriment as "damage or harm."[98] Using this definition of "detriment," the inclusion of this phrase means that, regardless of whether the term was formed by relying on false, deceptive, or misleading representations or statements of opinion, it will only be unfair if the consumer suffers a loss or damages as a result of the term. This provision reduced the effectiveness of this fairness test as it placed an excessive

[93] Afegbai v. A. G Edo State & Anor (2001) LPELR-193(SC)
[94] Sallau v. Minister F.C.T & Ors (2023) LPELR-60657(CA)
[95] Kuforiji & Anor v. V.Y.B. (NIG) LTD (1981) LPELR-1716(SC)
[96] Udogwu v Oki (1990) 5 NWLR (Pt.153) 721, p.731
[97] Kuforiji v. V.Y.B. (n.95), para 44
[98] Collin H., *Dictionary of Law* (5th Edn. A&C Black 2007)

burden on e-consumers to proof loss or damages, activities that increases access to justice costs. This may discourage e-consumers from pursuing claims. Furthermore, unfair terms regulations should focus on potential outcomes, not actual ones. As observed by the CMA when commenting on the unfair terms' provisions of the CRA 2015, unfair terms regulations are concerned with rights and duties; therefore, actual harm should not be a trigger.[99] This thesis agrees. 5.3.3.4 make recommendations on tackling these concerns.

5.3.3.4: Reforms.

5.3.3 expressed concerns about the inclusion of "detriment" in this fairness test. Therefore, an amendment removing the phrase "to the detriment of the consumer" from s.127(2)(b) is recommended. This is similar to the United Kingdom approach, which is that consumers do not need to show that they have suffered any harm before a term can be declared unfair.[100]

In conclusion, this fairness test improves the level of protection afforded to Nigerian e-consumers by bringing pre-contractual representations into the assessment of contract terms. Furthermore, this fairness test's extension to representations made by agents adds an extra layer of protection as it recognises the evolving landscape of marketing strategies in the digital market, where influencers now play significant roles. However, there are causes for concern regarding the need to show loss and/or damages before a successful claim under this test. It was recommended that this requirement should be removed.

5.3.4: Attention and Notification.

The final fairness test maintains that a term is unfair if the nature and effect of the term, condition or notice was not drawn to the attention of the consumer. This test is unique because it is the only test which the FCCPA 2018 provides for specific guidelines on how it will be determined. Following the provision of this fairness test in s.127(2)(d) is s.128, which provides for how notices and terms are presented to consumers (the notification requirements). These requirements mandate that–- notices and terms should be provided in a conspicuous manner and form that attracts the attention of an ordinary alert consumer,[101]

[99] ibid
[100] CMA Unfair Terms Guidance (n.74) para.2.19
[101] For more on who an ordinary alert consumer is under the FCCPA 2018, please see chapter 3.5.

and that consumers shall be given adequate opportunity to receive and comprehend the term or notice. There is a lot to unpack in this provision, for ease of analysis, this thesis will address the notification requirements in the next sub-chapter (5.4). Failure to comply with these notification requirements renders a term unfair.

While this thesis admits that this fairness test increases e-consumer protection in Nigeria, it is concerned about the practicability of some of its provisions, given the peculiarities of the digital market. This provision requires sellers to draw consumer's attention to the term's nature and effects, the failure of which renders the term in issue, unfair. While the standard of 'attention drawing' needed to satisfy this test is not provided for, drawing attention to the 'effect' of a term exceeds simply notifying consumers of its existence. "Effect" confers a standard that requires a given amount of explanation and guidance on the consequences of every term provided to consumers. With the number of transactions and e-consumers in the Nigerian digital market, it is impossible to expect e-sellers to explain the effects of each term in a contract to every e-consumer. The transaction cost required to do this would be burdensome as e-sellers' compliance costs are transferred to e-consumers,[102] which could lead to e-consumers exiting the market because of high prices.

Furthermore, as mentioned in chapter one, e-consumers' preference for e-commerce stems from the comfort and time-saving advantages of the market. Expecting e-sellers to explain the effect of each term would take away these advantages. There is also the issue of information overload that might ensue from e-sellers explaining each term to e-consumers.[103] Finally, allowing e-sellers to explain terms to e-consumers leaves room for manipulation. Given that profit-making is the end goal, through framing and other information manipulation tactics, it would be easy for e-sellers to manipulate Nigerian e-consumers when explaining the effects of terms to them, especially with the level of consumer literacy in the country.[104]

5.3.4.1: Reforms.

[102] Hahn Robert and John Hird. 'The Costs and Benefits of Regulation: Review and Synthesis' (1991) 8 Yale Journal on Regulation 233.
[103] Please chapter three.
[104] See chapter 2.2 on consumer literacy.

Chapter two mentioned that this thesis intends to recommend practical interventions that protect the functionality of the Nigerian digital market. While the requirement to explain the nature and effect of terms might help theoretically, it is impracticable. Therefore, an amendment to remove this requirement is recommended. This fairness test should be constrained to bringing terms to the e-consumers' attention at the pre-contract stage. To take care of the lawmakers' intention to ensure that e-consumers understand the terms, the FCCPA 2018's information rules, discussed in chapter three, could be extended to this test as it would facilitate a better understanding of terms for e-consumers, particularly if the recommendations made in chapter three are introduced. Furthermore, the recommendations made in 5.4 should also be adhered to as those are important to ensuring that e-consumers' attention is adequately drawn to terms. A better protective environment would be introduced if, instead of asking for an explanation of the effect of each term, they are mandated to comply with information and notification requirements in chapters three and 5.4 respectively.

Collectively, the FCCPA 2018 fairness tests offer a better protective environment for Nigerian e-consumers, especially as they bring into any assessment for fairness, pre-contractual activities, and communications provided before the conclusion of purchase contracts. While there are a few questions on the operations of some of the tests, if the recommended reforms are implemented, the prevalence of unfair terms in the Nigerian digital market is expected to be reduced. This chapter moves to discuss the notification requirements, which, as mentioned above, guide the determination of the attention and notification fairness test.

5.4: The Notification Requirements.

As stated above, the determination of the last fairness test (attention and notification) requires compliance with the notification requirements contained in s.128(1) of the FCCPA 2018. This subchapter deals with these notification requirements. S.128(1) provides as follows:

> "128(1) Any notice to consumers or potential consumers, or provision of a consumer agreement, which purports to – (a) limit in any way the risk or liability of an undertaking supplying goods or services or any other person; (b) constitute an assumption of risk or liability by the consumer; (c) impose an obligation on the consumer to indemnify an undertaking supplying goods or services or any

other person for any cause; (d) be an acknowledgement of any fact by the consumer; shall be drawn to the attention of the consumer in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer having regard to the circumstances.

(2) Before the consumer enters into the transaction or is required or expected to offer consideration for the transaction or agreement, the consumer shall be given adequate opportunity in the circumstances to receive and comprehend the provision or notice."

The logic for including the notification requirements as one of the fairness tests is one of common sense. Before it can be said that a term is fair to a consumer, such term should have been brought to the consumer's attention prior to the term's bindingness. Through the notification requirements, the FCCPA 2018 regulates how clauses and notices are drawn to the attention of consumers, with its focus on ensuring that they are provided in ways that facilitate consumer'' understanding of those clauses and their consequences. Regulating how clauses and notices are provided to consumers through the lens of fairness is not new, the United Kingdom[105] and the European Union[106] assess fairness through a similar mechanism, which it referred to as "transparency requirements." As provided for in the CRA 2015, these transparency requirements mandate that traders must ensure that terms and notices are legible and expressed in plain and intelligible language.[107] As will be shown in this sub-chapter, the FCCPA 2018's notification requirements have some similarities to both the CRA 2015 and the UCTD 1993 transparency requirements, therefore, when examining these requirements, this sub-chapter will take guidance, where reasonable and necessary, from the CRA 2015 and UCTD 1993's transparency requirements and the interpretation given to them by United Kingdom's courts and the CJEU.

Before the FCCPA 2018, notification of clauses in Nigeria was mostly regulated through the incorporation rules introduced through judicial precedents. Under these precedents,[108]

[105] CRA 2015, s.64(2) & (3)
[106] UCTD 1993, Art 4(2).
[107] CRA 2015, s.64 (3) and UCTD 1993, Art 4(2).
[108] MTN Communication Ltd v. Amadi (2012) LPELR-21276(CA).

regulation is only limited to the notices i.e., sellers are only obligated to inform buyers of the existence clauses that would govern the contracts. It is the responsibility of the e-consumers to seek those clauses out.[109] For example, if e-sellers' notice of "terms and conditions apply" passes the rules of incorporation, the terms and conditions themselves would be deemed to have been sufficiently notified to e-consumers. It is the responsibility of e-consumers to seek them out, either by asking e-sellers or browsing e-sellers' websites for these terms and conditions. This position is not surprising because of the dominant presence of the caveat emptor principle in the country's contract law system. However, this is no longer the position under the FCCPA 2018. By providing that "any notice to consumers or potential consumers, or provision of a consumer agreement…," s.128(1) expanded the scope of the notification requirements to the clauses themselves. Therefore, both the notice and the clauses must now comply with the notification requirements before the terms resulting from them are deemed fair. Using the example above, the "terms and conditions" themselves must adhere to the notification requirements, which will be discussed in detail below.

Expanding the scope of the notification requirements to the clauses sought to be incorporated as terms increases the level of protection offered to Nigerian e-consumers. With this, the "I agree to terms and conditions" tick-boxes, commonly used in the Nigerian digital market, are now required to include a hyperlink to the terms. This improves the level of protection offered to e-consumers and removes the burden of having them find these clauses. Admittedly, there is the issue of e-consumers not reading terms, however, this inclusion still offers a better protective environment as the few e-consumers who intend to read these clauses would be saved the burden of expending information costs to find them. Chapters two and three identified information costs as one of the reasons why e-consumers do not read prospective terms. Mandating its provision as a fairness test reduces costs and is expected to increase the number of e-consumers who read them.

Before going into the intricacies of these requirements, another point of attention is the exhaustive list under s.128(1) (a-d). This thesis was concerned that because of the popularity

[109] *ibid*

of the *exclusion unius est exclusion alterius* rule for interpreting statutes in Nigerian courts,[110] the notification requirements would be limited to only the terms listed in s.128(1) (a-d). However, these concerns were resolved because of the use of "fact" in 128(1)(d). As pronounced by the court in Osolu v Osolu[111] and the Evidence Act 2011 in s.258 (1), the word fact includes everything and anything, whether existing alone or alongside other things. Therefore, the use of 'fact' in s.128(1)(d) covers any information or clause sought to be incorporated into a contract as a term. It is all-encompassing, wide in nature, and covers every other term or fact as relevant and needs to be acknowledged by consumers.

As stated above, the notification requirements are two, the first of which requires that – consumers' attention must be drawn to the clauses in a conspicuous manner and form that is likely to attract the attention of an ordinary alert consumer (conspicuous manner and form to attract attention). The second requires that the notices and clauses provided in compliance with the first requirement should be notified to consumers before they are expected to offer consideration and with sufficient time that allows them to receive and adequately comprehend the clauses and notices (adequate comprehension opportunity). The provisions of these requirements require in-depth examination. An important point of note is that these requirements will heavily depend on the circumstances of each case(facts-in-issue) as they come.[112] The FCCPA 2018 also echoed the indispensability of facts-in-issue to these requirements when it included the phrase '… having regards to the circumstances.' in s.128(1) and (2). Therefore, in assessing compliance here, it is key to remember the need for reasonability and flexibility to facts. This should not be difficult because Nigerian courts are notable for using reasonability and factual flexibility to resolve issues heavily based on facts.[113]

5.4.1: Conspicuous Manner and Form to Attract Attention.

[110] This rule maintains that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication. The Supreme Court of Nigeria in Chief S. O. Agbareh & Anor Vs DR. Anthony Mimra & Ors (2008) LPELR-235(SC).
[111] (2003) JELR 44772 (SC)
[112] Odeniyi v Zard & Co (1972) 2 UILR 34.
[113] Daniel v. FRN (2013) LPELR-22148(CA). See also Etudaiye M., 'The Doctrine of Natural Justice as an Arm of the Rule of Law in Nigeria' [2007] 34(1) Journal of Malaysian and Comparative Law. 195- 21.

This first requirement mandates that consumer notices and clauses should be provided in a conspicuous manner and form that attracts the attention of an ordinary alert consumer[114] with keen consideration given to the circumstances of purchase. Manner is concerned with how both the notice and clauses are expressed, while form focuses on how they are structured and presented. Within this context, manner would cover the simplicity of the language, the style, etc. The United Kingdom CMA held the same view when commenting on the plain and intelligible transparency requirements of the CRA 2015, which is similar to the conspicuous manner and form requirement discussed here. They maintained that where such clauses require the use of uncommon and technical words, sellers should give consumers sufficient information (for example, explanatory notes) to ensure that consumers understand both the words used and the practical implications of any unavoidably difficult terms and their relationship with the e-consumers' rights and obligations and other terms of the contract.[115] Of course, the risk of information overload should be acknowledged, and e-sellers should not use this opportunity to overload e-consumers with unnecessary information.

On the other hand, "form" caters for the structure and organisation of the notice of incorporation and the clauses, the clarity of visual presentation such as fonts,[116] layouts, format, medium used (displayed or hyperlinked), the landing page, the position in which they are displayed on the website, how easy it is to navigate and find them, etc. This interpretation is similar to how the CJEU has interpreted the plain and intelligible language transparency requirement (which has the same objectives as this notification requirement) of the UCTD 1993.[117] In Kasler v OTP Jelzalogbank Zrt,[118] the CJEU held that terms should not only make grammatical sense to the average consumer but must also be displayed in ways that put consumers in a position "to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it [the term]"[119] The United Kingdom CMA[120] embraced this interpretation and maintained that transparency requirements exceed only the

[114] For more on who an ordinary alert consumer is under the FCCPA 2018, please see chapter 3.5.
[115] CMA Unfair Terms Guidance (n.74) para.2.47
[116] European Commission added font and visual presentation as a way of assessing transparency in notices and terms – EC Unfair Terms Guidance (n.63)
[117] The transparency requirements were initially in the UCTD 1993 which was transposed into the CRA 2015
[118] Case C-26/13 Celex No. 62013CJ0026
[119] *ibid* - 75
[120] CMA Unfair Terms Guidance (n.74), para. 2.45

plainness of the clause, plainness should be interpreted to cover provision in a way that allows the average consumer to understand the consequence of a term-in-issue.[121] The manner and form element of this notification requirement would also look at the functionality and efficiency of the medium of provision, such as - whether the hyperlink works or gets easily and frequently broken. it will also look at the heading of the landing webpage and whether e-consumers can easily understand that the clauses are included in the webpage. Convoluted clauses muddled together should also fail manner and form elements.[122]

The manner and form to which clauses and notices are provided will further be assessed against how conspicuous they are. The conspicuous element takes an umbrella position in this requirement. It focuses on how visible, noticeable, and easily attractable notices and clauses are. Determining sufficiency here could include looking at where the notice is positioned and where the clauses are presented, whether it is on the product page, on a different page or through a hyperlink. It could also consider where they are located on the provision page and whether the e-consumer would ordinarily navigate to that side of the website to see them. An issue that comes to mind here is the popular "buy now" option used by Nigerian e-sellers, which takes e-consumers directly from the catalogue search page to the checkout page. Assessing this market practice with the notification requirements, notices and clauses contained in the product pages of such goods will not have been conspicuously brought to the attention of e-consumers. However, this will not be the case if notices containing the hyperlinks to the clauses are conspicuously provided in an adequate manner and form (such as provision just before the "buy" or "complete order" button) on the checkout page.

5.4.1.1: The Ordinary Alert Consumer Benchmark.

In addressing the standard to which "conspicuous manner and form" should be considered, s.128(1) used the phrase '…in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer having regard to the circumstances…" This inclusion necessitates the need to examine who an ordinary alert consumer is. Chapter three

[121] *ibid* 2.45

[122] The European Commission took a similar approach with the transparency requirements. It also added font and visual presentation as a way of assessing transparency in notices and terms – EC Unfair Terms Guidance (n.63) para. 3.3.1

extensively examined the "ordinary consumer" concept under the FCCPA 2018.[123] An ordinary consumer under the Act is one with average literacy skills and minimal experience as a consumer of the goods being offered for sale. Chapter three concluded that this definition is effective for e-consumer protection in Nigeria.[124] Setting the benchmark for this requirement as the ordinary alert consumer means that the clarity of the wording and terminology used and the conspicuousness of the notice or clause must be one that the ordinary consumer of the goods being purchased will understand and easily notice. For example, the standard of simplicity used to describe a pair of shoes would be different from that used to describe an abstract painting, given that it is reasonable to expect an ordinary consumer of abstract paintings to know distinctive terminologies such as "renaissance style of painting" or "figurative style of painting." As mentioned in chapter three, the ordinary consumer benchmark is an effective benchmark for consumer protection in Nigeria, given that simplicity needs to stop somewhere. E-consumers who fall below this benchmark can seek protection under other mechanisms such as the right of cancellation, implied terms, and, for illiterate consumers, illiterate protection laws. This view was supported by the CJEU when interpreting the transparency requirements under the UCTD 1993 in Jean-Claude Van Hove v CNP Assurances SA,[125] where the court maintained that the perspective of consumers to whom the relevant terms are addressed has to be taken into account, and that the important question should be – "are such consumers sufficiently familiar with the language in which the terms were drafted?"

It is important to specifically address the inclusion of "alert" into the ordinary consumer standard by s.128(1). 'Alertness' confers an additional level of responsibility on ordinary e-consumers, one that is higher than the ordinary consumer standard contained in s.114 of the Act and discussed in chapter three (3.5.2.1). The inclusion of 'alert' here reflects the continuous dedication of the Nigerian legal system to the caveat emptor principle. In many cases, the Supreme Court has maintained that caveat emptor requires purchasers to be diligently alert and take charge of their own protection.[126] This alert standard requires some

[123] FCCPA 2018, s.118
[124] See Chapter 3.5.2.1
[125] [2015] C-96/14.
[126] Onyido vs. Ajemba (1991) 4 NWLR pt. 184 pg. 203. See also Yaro v. Manu & Anor (2014) LPELR-24181(CA)

level of attention and responsibility from e-consumers when using e-sellers' websites so as not to miss conspicuously provided notices. With this inclusion of "alert" comes the risk of e-sellers' presenting notices and clauses in a less-than-ideal manner and form and using the failure of e-consumers to notice them as a defence, arguing that an e-consumer-in-issue was not 'alert' enough. For effectiveness, the 'alert' should require the minimum standard possible, one that is satisfied simply by visiting e-sellers' websites and reading information from them.

When applying the ordinary alert consumer standard to determining the sufficiency of a notice or a clause on e-sellers' websites, consideration should be given to how easy it is for e-consumers to notice the notices on the webpage where they are displayed and also the clauses on the landing webpage where they are located. Notices on clauses contained in a separate webpage should not pass this requirement unless the hyperlink to the web page has been conspicuously provided to e-consumers. The purpose of the hyperlink linking the notice to the clauses must be clearly spelt out and must comply with other reasonable requirements as to manner and form discussed above.

Furthermore, clauses provided at a stage where e-consumers are less likely to need or notice them would not satisfy the standard herein. For example, a clause describing a product provided in the website terms of use webpage rather than with other product descriptions on the product page would fail this requirement as an ordinary alert e-consumer would not expect to see relevant product description in the website terms of use webpage. The European Commission took a similar position in the UCTD 1993 guidance document, where the Commission specifically pointed out out-of-context clauses hidden among other provisions as failing the transparency requirements.[127] However, this would not be the case if there is a notice on the website terms of use webpage stating that there are essential and relevant product description clauses on the terms and conditions webpage with the hyperlink provided and anchor links directing e-consumers to the relevant product clauses on the terms and conditions webpage. The FCCPA 2018 provisions on the manner and form of information

[127] EC Unfair Terms Guidance (n.63), para. 3.3.1

provision, as contained in s.114 and discussed in 3.5, would be relevant and helpful here.[128] As mentioned above, the standard here exceeds the visibility of the information, it extends to the enhancement of visibility and understanding through the manner and form of provision.

5.4.1.2: Applying this Requirement to Popular E-sellers Notification Practices in Nigeria.

To control and reduce internet fraud in the country, reporting obligations prevent the use of the popular 'purchase as a guest' option on Nigerian e-platforms. E-consumers have to sign up to make purchases. There are two ways of signing up–- completing a registration form with a consent tick box incorporating the terms and conditions of the website through hyperlinks, or signing up through third-party platforms such as Facebook or Google.[129] Under the Evidence Act 2011, contracts using these tick-boxes have the status of a signed document.[130] In the absence of fraud, duress or misrepresentation, the position of the law in Nigeria is that any clause incorporated by notice into a signed contract is binding on the party signing it.[131] It was inconsequential whether the terms were presented to the party by the other party at the time of signing[132] or references made to another piece of document or webpage. As long as there are notices referring to them, they are deemed to have been sufficiently notified and incorporated. However, with this notification requirement of the FCCPA 2018, this position of the law is no longer applicable for e-consumer contracts as the standard of notification required to sufficiently notify e-consumers of clauses intended to govern a contractual relationship is now higher, meaning the practice of e-sellers using checkboxes to imply sufficient incorporation and notification will no longer pass this notification requirement, and consequently the attention and notification fairness test. E-sellers must now conspicuously draw e-consumers' attention to the clauses sought to be incorporated, and the e-consumer must be afforded reasonable sufficient time for comprehension as provided under the second notification requirement discussed in 5.4.2. Applying this new standard means that the

[128] Please see Chapter 3.5 for more on manner and form of information provision.
[129] Konga <https://www.konga.com/account/login> accessed 25 December 2023 and Jumia <https://www.jumia.com.ng/customer/account/login/ > Accessed 25 December 2023.
[130] Evidence Act, 2011, s. 93(3)
[131] O'Sullivan T. 'Online Shopping Terms and Conditions in Practice: Validity of Incorporation and Unfairness' [2014] 20 Canterbury Law Review. p.6-8.
[132] DHL International Nigeria Limited v Udechukwu Chidi (1994) 2 NWLR (Pt. 329) 720.

popular ‘I agree’ tick-boxes and checkboxes must always contain any hyperlink linking directly to the terms sought to govern the contractual relationship. The tick-boxes must include conspicuous notices showing that the terms in the hyperlink are being incorporated. It must also include the overall purpose of such clauses. This offers a more protective environment to Nigerian e-consumers.

Another common practice is the use of website footers. These footers are available at the end of every webpage of e-sellers’ websites and contain hyperlinks to webpages with clauses sought to be incorporated into the purchase contract. With the popularity of this practice, this chapter considers whether the use of these footers satisfies the standard set by this requirement. The determining factor here is whether an ordinary alert e-consumer, in the use of the webpage, could easily notice the hyperlink at the foot of the webpage-in-issue. The use of ‘having regard to the circumstance'' by s.128(1) allows interpreting authorities to consider factors, such as–- whether the e-consumer would normally navigate to the end of the webpage before achieving or during the process of achieving, the purpose of the webpage-in-issue, the amount of information on the webpage, the visibility of the website footer, the length of the webpage, etc. If e-consumers can reasonably be expected to achieve the purpose of using the webpage before getting to the footer, then the notices contained in the hyperlink cannot be said to have complied with this notification requirement. For example, a website that offers the option for e-consumers to purchase from the search result page or the top of the webpage (the buy-now or add-to-cart function) cannot be said to have given sufficient notice through footers under s.128, unless the e-consumer is conspicuously informed that there are relevant clauses at the footer or the hyperlinks leading to the clauses presented to the e-consumer in a conspicuous manner on the order completion page. The operative words here are - ‘conspicuous’ and ‘attract attention’. If facts-in-issue reveal that the likelihood of e-consumers scrolling to the end of the webpage is low, the notices at the footers will fail this requirement. That will not be the case if the terms being incorporated are presented conspicuously as webpage headers rather than footers, given that headers are conspicuous.

5.4.1.3: Recommendations.

This sub-chapter concludes that this notification requirement improves the level of protection afforded to e-consumers in Nigeria and it believes that “conspicuous manner and form” is a

standard that would achieve efficacy. Despite this conclusion, this chapter is concerned that this standard is very broad, and contracting parties might struggle to definitively know what would pass and what would fail this requirement. Similar acknowledgement has been made regarding the CRA 2015 and UCTD 1993's transparency requirements, which is why the European Commission and the United Kingdom CMA introduced guidance documents with explanatory examples to aid interpretation and compliance.[133] This chapter concludes that this would also be a functional way to improve compliance and effectiveness of the notification requirements. The FCCPC has the power to issue guidelines on how the provisions of the FCCPA 2018 could be maximised for e-consumer protection.[134] With the awareness of this function and power, this subchapter makes the following recommendations.

Firstly, to improve the effectiveness of the manner and form requirement, there is a need for the FCCPC to start issuing guidance documents as some of the recommended reforms here are on how the Act is to be interpreted to take care of the peculiarities of the digital market. As mentioned in 5.3.1.1, the importance of guidance documents cannot be overstated. Through these guidance documents, e-sellers will be able to understand lawmakers' intentions, which will assist in their compliance activities. It will also help e-consumers understand their rights better and assess their claims' potential success, when required.

Within this context, a guidance document will assist Nigerian e-sellers and e-consumers in understanding the conspicuous manner and form standard and the ordinary alert consumer benchmark. A good example of this is the European Commission guidance document on the UCTD 1993[135] which made several recommendations on how to comply with the transparency requirements.[136] Some of these recommendations are for stakeholders (member countries, e-sellers and e-consumers) to consider:

> "
>
> a. whether the consumer had the real opportunity of becoming acquainted with a contract term before the conclusion of the contract; this includes the question of whether the consumer had access to and was given the

[133] EC Unfair Terms Guidance (n.63) and CMA Unfair Terms Guidance (n.74)
[134] FCCPA 2018, s.17(b)
[135] EC Unfair Terms Guidance, (n.63) para 3.3
[136] CMA Unfair Terms Guidance (n.74) part 2 (paras 2.42 – 2.65)

opportunity to read the contract term(s); where a contract term refers to an annexe or to another document, the consumer must have access also to those documents;

b. the comprehensibility of the individual terms, in light of the clarity of their wording and the specificity of the terminology used, as well as, where relevant, in conjunction with other contract terms. In this connection, the position or perspective of consumers to whom the relevant terms are addressed has to be taken into account; this will also include the question of whether the consumers to whom the relevant terms are addressed are sufficiently familiar with the language in which the terms are drafted; and

c. the way in which contract terms are presented. This might include aspects such as: the clarity of the visual presentation, including font size, the fact of whether a contract is structured in a logical way and whether important stipulations are given the prominence they deserve and are not hidden amongst other provisions, or whether terms are contained in a contract or context where they can reasonably be expected, including in conjunction with other related contract terms etc."

This thesis recommends the introduction of similar guidelines on the interpretation of the FCCPA 2018's provisions on this notification requirement. Chapter 2.2 informed this thesis on the low level of consumer literacy in Nigeria. It also highlighted the effects of this on their access to justice capabilities and how they struggle to definitively predict the strength of their claims. These guidance notes will reduce these risks.

Other recommendations could be advising e-sellers to use tools that aid conspicuousness and ease of access on their website. Some of these include sub-headings and anchor links, a tool used to subhead webpages. Once clicked, anchor links lead directly to the sub-headed clause, terms or information. The United Kingdom Information Commissioner's Office (ICO) took a similar approach when dealing with the information provision requirements under the United Kingdom General Data Protection Regulation 2018 (the UK GDPR). The ICO advised that ease

of access can be facilitated using headings and sub-headings.[137] Of course, the ICO deals with privacy matters, however, the spirit of the guidelines remains the same as that of this requirement. This ICO guideline seeks to facilitate ease of access and noticeability of privacy information by data subjects, the same way this requirement seeks to facilitate the same for clauses sought to be notified to e-consumers.

To correct the issue of clauses being lost in footers as identified above, the FCCPC should mandate that e-sellers provide notices as headers rather than footers. This will correct the issue of e-consumers purchasing goods or using webpages without getting to footers, as identified above. This is because headers are the first thing e-consumers see on webpages.

Aside from these recommendations, to ensure that e-consumers actually see notices and clauses, e-sellers should be legally mandated to display notices and hyperlinks to all clauses governing the contractual relationship just before or under the order completion button. These buttons, which are usually named "buy", "order" or "checkout" should have the notices containing hyperlinks to clauses that will govern the contract, with the purpose of these clauses clearly stated on the notices. This would ensure that e-consumers do not miss notices, as the order completion button must be used by all e-consumers when completing purchases. A similar ambiguity prevention mechanism was used by the CCR 2013, as an information rule, when it mandated e-sellers to clearly display "[the words] 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader" at the completion of order processes. With this e-consumers will definitively know when the obligation to pay is triggered. In the same spirit, mandating the provision of hyperlinks to all the clauses governing the purchase contract under the "buy" or "purchase" option will definitely bring Nigerian e-consumers' attention to clauses governing the contract.

From the analysis above, this requirement improved e-consumer protection in Nigeria by introducing modern paradigms of information rules into e-consumer contracts. It ensures that notices and clauses governing purchase contracts are provided conspicuously in a manner and form that Nigerian e-consumers can use them, the failure of which renders them unfair.

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[137] The Information Commissioner's Office, How Should we Draft our Privacy Information? <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/the-right-to-be-informed/how-should-we-draft-our-privacy-information/> Accessed at 13 January 2024

Furthermore, it corrects some of the inadequate implications of the Evidence Act 2011 on electronic signatures and their effects on clickwrap e-consumer contracts. However, there is a need to increase the effectiveness of this provision by offering guidance on how these requirements should be complied with. The recommendations above are good starting points. This chapter moves to the second notification requirement – adequate comprehension.

5.4.2: The Adequate Comprehension Requirement.

No matter how conspicuous the manner and form through which notices are given, e-consumers might struggle with the notices and clauses if they are not given sufficient time to examine them. This leads to the second requirement which provides that before the consumer enters into the transaction or is required or expected to offer consideration for the transaction or agreement, the consumer shall be given adequate opportunity in the circumstances to receive and comprehend the provision or notice.[138] This requirement is primarily concerned with the time of notification and ensuring that e-consumers are allowed adequate time to comprehend them. This requirement sits firmly with the recommendations made in chapter three, where it was thoroughly analysed and recommended that information, in this case, clauses and notices, should be provided to consumers at the pre-contract stage.[139]

The first part of this provision requires that both the notice and clauses must be provided before e-consumers are required or expected to offer consideration for the transaction or agreement. In the practical sense, this would be when the product is displayed for sale because in the digital market, consideration is expected at any time after the product is displayed on e-sellers' website. As shown in chapter three, it is impossible to legislate when e-consumers will use information, so it is safe to interpret this requirement as mandating provision at the earliest possible time, which is when products are being displayed, catalogued and offered for sale by e-sellers on their websites. It is a logical and reasonable conclusion that a contract is unfair when a party does not have access to the terms of the contract before concluding the contract. When pronouncing on the transparency requirement, the CJEU in RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen e.V. (the RWE case)[140]

[138] FCCPA 2018, s.128(2)
[139] See Chapter three.
[140] [2013] EUECJ C-92/11 (21 March 2013).

considered access to contract term at the pre-contractual stage as a key element of fairness and transparency of such terms. In the words of the court,

> "… it is of fundamental importance for a consumer' to have 'information, before concluding a contract, on the terms of the contract and the consequences of concluding it ... It is on the basis of that information in particular that he decides whether he wishes to be bound by the terms…"

The FCCPA 2018 introduced a more protective environment than that pronounced in the RWE case because it mandates that notices and clauses should be provided before consideration is required or expected from e-consumers, which is earlier than the time stated in the RWE case above.

The more complicated part of this requirement is that which mandates that receiving e-consumers should be given adequate opportunity to receive and comprehend the provision or notice, with keen consideration to the purchase circumstances. This requirement is filled with uncertainties as it is hard to determine what would qualify as 'adequate opportunity' given that e-sellers cannot control when e-consumers will access notices and clauses. One of the advantages of the digital market is that e-consumers should be able to access it at anytime, therefore, it would be impossible for e-sellers to definitively tell when e-consumer will access clauses and notices. Furthermore, e-consumers' comprehension abilities differ and depends on several factors tied to the circumstances of supply. The Act understood this complexity and attempted to reduce this by including "in the circumstances" in its provision on this requirement. This inclusion incorporates facts relating to the relevant transaction as a key element for determining sufficiency under this requirement. Comprehension timeline would differ based on factors such as the nature of the product, the effect of the clauses sought to be incorporated on the contract as a whole, the unusualness of the clauses, the technicalities and complexities of the clauses, events leading to the conclusion of the contracts such as the (undue) pressure on an e-consumer-in-issue to complete the transaction, the reasonableness of the clause which would trigger additional efforts,[141] the nature of the market, the popularity

[141] J. Spurling Ltd. v Bradshaw [1956] 1 W.L.R. 461

and common-ness of the relevant clause in the market and most importantly, the average literary skills of ordinary alert e-consumers of the product-in-issue, etc. This is further complicated by the number of consumer goods in the digital market. Each of these might have its own level of complexity, consequently requiring different comprehension timelines.

Furthermore, with the absence of physical presence in the digital market, e-sellers cannot know when the e-consumer would access the clauses, therefore, determining whether a particular e-consumer has been given "adequate opportunity" to comprehend becomes an impossible task. An e-consumer might access the clauses and take a few days to understand them before purchasing, while another would purchase, minutes after accessing the clauses. Therefore, it is simply impossible to legislate and definitively monitor this element of the adequate comprehension requirement.

5.4.2.1: Reforms.

To remove uncertainties, there is a need for an amendment of s.128(2) to remove the adequate opportunity to comprehend part of this requirement. If the lawmaker is so concerned with terms being sprung on e-consumers, the first part of this requirement, which mandates the provision of information before consumers are required to or expected to offer consideration for goods, takes care of these concerns. Furthermore, as discussed in chapter six, the right of cancellation could also help resolve lawmakers' concerns here as it would allow e-consumers to reconsider the impact of clauses provided to them and cancel the contract at no cost.

Pending an amendment, the mischief rule of statutory interpretation might be helpful for interpreting authorities here.[142] When the literal interpretation of a given law causes absurdity, the mischief rule is employed to interpret such law in a way that takes care of the mischief sought to be corrected by the law.[143] As shown by this notification requirement, the mischief sought to be corrected here is to ensure that clauses are not sprung on e-consumers at the last minute, however the construction of the provisions of s.128 has created uncertainties that make the provision impracticable if interpreted literally. With this rule of

[142] Nwobike v. FRN (2021) LPELR-56670(SC)
[143] *ibid* - Page 67 - 67 Paras C - D

interpretation, interpreting authorities will be able to pronounce that this requirement only requires e-sellers to provide notices and clauses at the time of offering or displaying the goods for sale. This is the only practical way to ensure that e-consumers are given the opportunity to comprehend them, given the above-identified issues. The adequate comprehension timeline should be the responsibility of e-consumers, who should be obligated to ensure they take all the time needed to comprehend clauses before purchasing. This interpretation protects the market's functionality as it is impossible to definitively determine an adequate comprehension timeframe for all e-consumers and all consumer goods offered in the digital market.

Understanding that adequate notification is one of the fairness tests necessitates the need to examine the FCCPA 2018 regulatory approach to notification of contract terms. Notification is important because the foundation of fairness in standard-form contracts should start with ensuring that e-consumers are aware of terms before they are bound by them.[144] An important observation from the examination of the notification requirements is that the FCCPA 2018 takes a step further away from the extant rules of the caveat emptor principle by reducing some of its' potency and employing several information rules in determining the sufficiency, or lack thereof, of notices and clauses sought to be incorporated into e-consumer contracts. While there remains the practicability issue with certain requirements of the second requirement, it cannot be denied that these requirements improve e-consumer protection in Nigeria, because the FCCPA 2018 makes them a test for assessing fairness.

With the realisation that legal mechanisms are only as effective as their enforceability and the consequences for non-compliance, this chapter moves to consider the effects of an unfair term on consumer contracts in Nigeria. The remedies available to e-consumers when unfair terms are included in their contracts will also be discussed.

5.5: Effect of an Unfair Term

This subchapter examines the effects of an unfair term under the FCCPA 2018. With the unconditionally prohibited terms contained in s.129, the effect is expressly provided for by

[144] Jansen (n.23) 985

the FCCPA 2018 - they are void to the extent of their inconsistencies, meaning the prohibited term is void, but other terms of the contract remain binding on the parties.[145] It is understandable that the FCCPA 2018 would take this approach rather than voiding the entire contract. This is because, there are negative effects tied to too many voided contracts in the market, therefore, it is better to void only the prohibited term and allow the other rights and obligations to continue to exist. With the FCCPA 2018's prohibited terms. as listed in s.129, there is no scenario where any of the prohibited terms is an *essentialia negotii* (the contents needed to form a valid contract), therefore, there is no risk that voiding a prohibited term would affect the validity or continuous existence of a purchase contract.

Regarding the restricted terms, the FCCPA 2018 is quiet on the effect of a term failing the fairness test. This means that the existing judicial precedents on the effects of unfair terms remain the law. The Nigerian courts have taken two approaches when considering the effects of unfair terms – Firstly, the unfair term should be construed forcibly against the party that provided them (the *contra proferentem* rule).[146] The use of 'forcibly' has been interpreted to mean interpreting the unfair term so that any ambiguity or uncertainty in the meaning and scope of the term should be resolved against the party seeking to rely on the unfair term.[147] Secondly, an unfair term could also be made non-binding on the receiving party, within this context, e-consumers.[148] Making the term non-binding means either releasing e-consumers of the obligations contained in the unfair term,[149] or taking away e-sellers' rights contained in the said term.[150] This is similar to the position of the law in the United Kingdom[151] and the European Union.[152] This similarity would allow this sub-chapter to learn from judicial decisions on consumer cases, interpreting the provisions of both of these frameworks, as there are no consumer cases on unfair terms in Nigeria. In addressing when the non-bindingness starts, the CJEU in Gutierrez Naranjo v Cajasur Banco SAU[153] held that the non-binding effect should

[145] FCCPA 2018, s.129(2)
[146] Delmas & Ors v. Sunny Ositez International Ltd (2019) LPELR-47387(SC).
[147] Sagay (n.39) 172.
[148] Ogwu v Leventis Motors Ltd (n.12) 115.
[149] Otegbeye v. Little (1906)1 NLR 70. See also Odeniyi v Zard (n.112) 34.
[150] Chike Atu v. Face to Face Million Dollar Fixed Odd Pools Ltd (Unreported) High Court of the East Central State, Onitsha Judicial Division Oputa J. Suit No. 0/161/72
[151] CRA 2015, s.62(1).
[152] UCTD 1993, Art. 6(1)
[153] [2016] EUECJ C-154/15 (21 December 2016)

apply retrospectively from the date the term was inserted into the contract and not from the date that it is declared unfair. According to the court, the consumer must be returned to the legal and factual situation they would have been in if that term had not existed. For example, sums paid under a non-binding term should be repaid in full, and the refund cannot be limited to the period after the judgment; it must start when the term is inserted. This thesis expects Nigerian courts to take a similar approach as it is one of common sense.

Despite admitting that the above effect offers a good protective environment for Nigerian e-consumers, this thesis is concerned that a term declared unfair could be an *essentialia negotii*, which would consequently affect the continuous existence of the contract. There are cases where vitiation of the contract might not be beneficial to e-consumers for reasons that include but are not limited to secondary transaction costs and commitments already tied to the goods and purchase contracts. There is a need for the FCCPA 2018 to introduce rules on what happens when making a term unbinding, which affects the essence and validity of the contract. While it might appear obvious that the solution is that the contract will become terminated. There will be situations where this approach is not beneficial for e-consumers.

5.5.1: Reform.

As stated above, given the similarity of the effects of unfair terms in Nigerian, the United Kingdom and the European Union, this thesis will look to judicial decisions on the UCTD 1993 for guidance on how to handle situations where making an unfair term non-binding affects the continuous existence of the contract.

In addressing this issue, the CJEU has taken two different approaches. The first is allowing the parties to agree on a replacement term to replace the unfair term.[154] Under this approach, the court could supervise this negotiation through a bespoke framework for negotiations that ensures fairness towards the consumer-in-issue.[155] Furthermore, the agreed replacement term must also pass the fairness test before it can be accepted.[156] The second approach allows the court to unilaterally replace the unfair term with a supplementary provision of the law.[157]

[154] XZ v Ibercaja Banco SA [2020] EUECJ C-452/18
[155] Banca B. SA v A.A.A [2020] EUECJ C-269/19: 954
[156] *ibid*
[157] Banco Espanol de Credito SA v Calderon Camino (C-618/10) [2012] 6 WLUK 273

One of the ways to determine this supplementary provision of the law is as provided for the UCTD 1993, which is - the position of the law that would have applied if the contract is silent on the issue covered by the unfair term.[158] Using an example under Nigerian law, if an e-seller include a term that the risk of the goods is passed to e-consumers once the goods are dispatched for delivery. Such a term would be unfair under Nigerian law as the risk in goods remains with the seller until delivery.[159] Therefore, if this recommendation is adopted to the Nigerian legal system, the court will be able to replace such term with one that leaves the risk with the e-seller till delivery is made.

Initially, this thesis was worried that the second approach could be considered paternalistic because it allows the courts to "revise or rewrite contracts" for contracting parties.[160] However, these concerns were discarded because it appears the CJEU addressed these criticisms in a series of cases starting with Kásler and Káslerné Rábai[161] where it held that the wishes of the affected consumer should take precedence over what the court may find desirable. If the consumer wishes to terminate the whole contract rather than renegotiate or replace it, the court should respect his/her wishes.[162] Also, if the consumer wishes to uphold the unfair term, then the court must also respect this wish.[163] However, to ensure that the consumer is making an informed choice, the CJEU mandates that the consumer needs to be informed of the consequences of his/her decision, and the court must be satisfied that the consumer understands the consequences of his/her choice.[164]

This thesis recommends that Nigeria take a similar approach when facing situations where the non-bindingness of an unfair term affects the contract's validity. As the European Commission maintains, the objective of making an unfair term non-binding on affected consumers is to protect consumers and restore the correct balance between contracting parties.[165] Therefore, interpreting bodies in Nigeria should remember that the affected consumer's wishes are the

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[158] UCTD 1993, recital 13
[159] Blackstone v. Samoba (Nig) Ltd (n.70) paras E - D
[160] Micklitz and N Reich, 'The Court and the Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)', (2014) 51 Common Market LR 793
[161] (Case C-26/13) EU:C:2014:
[162] *ibid* at 282
[163] Dziubak v Raiffeisen Bank International AG (03 October 2019) [2019] EUECJ C-260/18
[164] EK v DBP (08 September 2022) [2022] EUECJ C-80/21
[165] EC Unfair Terms Guidance (n.63) para 4.3.2.

most important factor here, therefore, whatever effect is applied must reflect the consumer's wishes.

In conclusion, this thesis agrees that the effect of an unfair term under the Nigeran legal system protects e-consumers in the country. Its only concern is situations when making the unfair term non-binding affects the validity of a contract, especially when terminating the entire contract would not be beneficial for e-consumers. Recommendations were made on how this issue can be addressed. With the understanding of the effect of an unfair term on the contract, this thesis moves to consider the remedies available to e-consumers when unfair terms are included in their contracts.

5.6: Consumer Remedies for Breach of Unfair Terms Regulations.

The primary remedy for breach of the unfair terms regulation under the Nigerian legal system is damages.[166] The right of damages is firmly established in civil claims. Under Nigerian contract law, the right to damages is activated once a party suffers a loss due to another party's activity or act.[167] Damages are of two kinds: general and special damages. While all that is needed to activate the former is the proof of wrongdoing, which in this case is the unfairness, the latter requires the proof of actual loss, which can be financial, discomfort, consequential breach of a secondary contract, etc. Commenting on general damages in contract claims, Uwaifor JSC maintained that –

> "… the quantum [of general damages] need not be pleaded and proved. The award is quantified by what, in the opinion of a reasonable person, is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act of the defendant found in default by the court. It does not depend upon calculations made, and figures arrived at from specific items."[168]

This position of the law on general damages is set in stone, once the court declares wrongdoing on the part of a party, the aggrieved party becomes entitled to damages, all that

[166] Associated Bus Co. PLC v. Anyanwu (2020) LPELR-49551(CA)
[167] Beta Glass PLC v. Epaco Holdings Ltd (2010) LCN/3826 (CA).
[168] Rockonoh Property Co. Ltd VS. Nigerian Telecommunications Plc (2001) 14 NWLR (PT. 733) 468 at 493 Para F-G.

is needed is to include a claim for it in the statement of claim and the particulars of claim.[169] This is why most civil claims in Nigerian courts include an omnibus general damages relief claim, regardless of whether the key reliefs sought are declaratory or have special damages attached. Applying this to this context, once a term is declared unfair, e-consumers become entitled to a relief of general damages regardless of whether such consumer elects to vitiate the contract or continue the contract.[170]

However, there are concerns on the effectiveness of special damages for e-consumer protection in Nigeria. These concerns are tied to the access to justice issues discussed in 2.2. To succeed in a claim for special damages, e-consumers must prove that they have suffered particular losses, which they would not have suffered if the unfair term was not included in the contract. Looking at the nature of consumer transactions in the digital market, the probability of e-consumers claiming for special damages is very low. This is because of the low value of consumer transactions, the number of damages that could be obtained from such claims, and the cost and efforts required to make such claims and prove them to the standard required by law.

This thesis remains concerned that these remedies may fail to achieve efficacy given the access to justice issues discussed in 2.2. When seeking remedies under the unfair terms' rules, e-consumers would need a declaratory pronouncement that the term is unfair, after which their claims for damages, in case of special damages, begin, and they have to prove such damages. This thesis remains unsure whether Nigerian e-consumers would be willing to exert the cost and efforts needed to obtain these remedies, especially because they do not get their cost of litigation back. In most cases, what they get is a token of victory, which hardly covers the expenses incurred in bringing or maintaining the action.[171] It is therefore recommended that there is a need for a statutory self-enforceable remedy, one that does not need the court

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[169] British Airways v. Atoyebi (2014) LPELR-23120 (SC).

[170] Tanko VS. Mai-Waka (2010) 1 NWLR Pt 1176 p.468. See also Kopek Construction Ltd. VS. Ekisola (2010) 3 NWLR Pt 1182 p.61; Aluminium Manufacturing Co. Nigeria Ltd. v Volkswagen of Nigeria Ltd. (2010) 7 NWLR Pt 1192 p.97.

[171] The costs awarded by Nigerian courts are usually "a token of victory" which is sometimes not up to 10% of the entire litigation cost incurred by the parties. - GTDT, 'Complex Commercial Litigation, Nigeria' (2019) <https://gettingthedealthrough.com/area/102/jurisdiction/18/complex-commercial-litigation-nigeria/> accessed 31 December 2023.

system except in extreme circumstances and one that Nigerian e-consumers can easily and unilaterally exercise. This remedy is the right of cancellation and will be the focus of the next chapter.

5.7: Conclusion

This chapter's assessment of the FCCPA 2018's unfair terms regulations brings to light several issues that might affect its effectiveness for e-consumer protection in Nigeria. Admittedly, the conclusion from the analysis in the chapter revealed that the FCCPA 2018 unfair terms regulations are an improvement compared to the pre-FCCPA era. This is mainly because it extended the scope of the unfair term rules from only exemption clauses to all types of terms in consumer contracts and also reduced legal uncertainties by introducing definite fairness tests. Due to the lack of judicial activities on the Act and the dearth of consumer cases in Nigeria, this chapter relied on interpretations given to similar provisions under the United Kingdom's CRA 2015 and the European Union's UCTD 1993 for guidance on how to improve the effectiveness of the FCCPA 2018 unfair terms rules.

Analysis of the FCCPA 2018's approach to fairness reveals a two-way approach – outrightly prohibiting selected terms and submitting the restricted terms to a fairness test. On the terms subject to the fairness test, this thesis pushed back heavily on the FCCPA 2018's submission of price to the fairness test. Objections rooted in consumer responsibility and the extant principles of contract law were used to make the point that submitting "price" to a fairness test is an excessive intrusion and that there is no way that price can be fairly legislated on. However, caution was preached, and it was emphasised that there is a need to detach price as a consideration for the purchase contract and the elements surrounding transparency of prices. The latter should be assessed for fairness while the former should not.

The tests for determining fairness were examined individually for effectiveness and to determine the extent to which they protect e-consumers. Interpretation guides and recommendations to facilitate efficacy were made. One of the fairness tests brought into the consideration for fairness, the way that contract terms are notified to e-consumers before contracts are concluded. This necessitates this chapter to examine the notification requirements of the FCCPA 2018. With the similarity in the objectives of the notification requirements to the CRA 2015 and the UCTD 1993 transparency requirements, this chapter

leaned on the various interpretations given to the transparency requirements to aid analysis and recommend reforms on how to fill identified gaps. Finally, the effects of an unfair term and the remedies available to e-consumers were examined with recommendations made on situations when an unfair term vitiates the entire contract, to the detriment of e-consumers.

This chapter concluded that while the unfair terms rules reveal an improvement that might work in theory, its efficacy remains in doubt, given the access to justice issues that might impede e-consumers' ability to seek redress when saddled with unfair terms. It preaches the need for a self-enforceable redress mechanism that e-consumers can trigger without the need to approach the court or an interpreting body, one of which is the right of cancellation. This right of cancellation will be the focus of the next chapter.

CHAPTER SIX

THE RIGHT OF CANCELLATION

6.0: Introduction.

Chapter three noted that, while the provision of information should form the foundation for the system protecting Nigerian e-consumers, the limitations of such rules (as discussed in Chapter 2) mean that additional protective measures are required. Chapters 5 and 6 examined two of these measures, namely the implication of terms and rules regulating unfair terms. This chapter discusses a third, namely, the right of cancellation.

This chapter will examine the right of cancellation under the FCCPA 2018 and the Nigerian legal system as a whole. It will make this examination to determine the extent of protection offered to Nigerian e-consumers by this mechanism. Reforms will be recommended where needed. It will also discuss how the right of cancellation can help correct gaps identified with some of the other consumer protection mechanisms discussed in chapters two to five. The recommended reforms will be analysed for efficiency using Ramsay's cost benefit analysis tool for determining efficiency in consumer policies.

6.1: The Conventional Right of Cancellation.

Several countries around the world have introduced rights of cancellation. In the United Kingdom,[1] the European Union (who referred to their right of cancellation as the right of withdrawal)[2] and South Africa[3], this right is a consumer protection mechanism that allows e-consumers to exit purchase contracts and their obligations, at no cost, within a specific period after receiving purchased goods. This right of cancellation is exercised through a notice from e-consumers to e-sellers. E-consumers do not have to give any reason for cancellation, nor do they incur any cost or penalty for exercising their cancellation rights.[4] This right must be exercised within a definite period known as either the cooling off period or the cancellation

[1] Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 No.3134 (CCR 2013), Part 3 (r.27-r.38)
[2] European Union Consumer Rights Directive 2011/83/EU (CRD 2011), Art.9
[3] South Africa's Electronic Communications and Transactions Act 25 of 2002 (ECTA 2002), s.44
[4] Eidenmüller H., 'Why Withdrawal Rights?' [2011] 1 European Review of Contract Law 2

period.[5] A common theme amongst the right of cancellation introduced by these countries and international regulator is that the cancellation period starts once the goods have been received, thereby allowing e-consumers the opportunity to physically assess the goods to determine their value and decide whether to remain bound by the purchase contract or cancel it.[6] As seen in 6.2, this is not the case in Nigeria, a critical factor affecting the effectiveness of the FCCPA 2018's right of cancellation.

Over the past few decades, the right of cancellation has rapidly gained popularity within the consumer protection space, particularly contracts conducted away from sellers' premises (off-premises contracts) and without consumers having the ability to physically access and assess goods before entering into the contract (distance contracts).[7] The emergence and popularity of the digital market contributed immensely to this growth.[8] One of the justifications for this increased use is the realisation that consumers are better informed when concluding contracts in the traditional physical market than through a distance medium such as the digital market. Therefore, e-consumers need a mechanism that gives them the opportunity to physically examine goods before being bound to purchase contracts.[9]

With the United Kingdom being a member of the European Union during the introduction of the right of cancellation as a vital part of the European consumer protection framework, the mechanism automatically became a key part of its consumer regulations. Even though the right of cancellation is fundamentally against foundational English contract law principles of freedom of contract and *pacta sunt servanda* (meaning "agreements must be kept"), it has

[5] The United Kingdom and European Union have this period as fourteen days from the date consumers receive physical possession of the goods, [United Kingdom - CCR 2013, r.30(3) and European Union – CRD 2011, Art. 9(1)] while South Africa has it as seven days. (ECTA 2002, s.44(1)(a).

[6] Kotz discussed the European Union right of withdrawal and the opportunity to access goods and their value - See Kötz Hein, *European Contract Law* (2nd Edn, Oxford University Press, 2017) 279

[7] Borges G and Irlenbusch B, 'Fairness Crowded Out by Law', (2007) 163 Journal of Institutional and Theoretical Economics 84–101, 85. See also - Luth H. and Cseres K., 'The DCFR and Consumer Protection', in Chirico et al., (eds) *Economic Analysis of the DCFR* (Otto Schmidt Verlagskontor 2010) 235–73

[8] Tang S., 'The Statutory Right of Withdrawal in E-Commerce: Comparative Study of European Law and Swiss Law' (Doctoral dissertation, Université de Neuchâtel, 2015).

[9] Hellwege P, 'Right of Withdrawal in Distance and Off-Premises Contracts' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018). 536

contributed value to e-consumer protection in the jurisdiction,[10] hence why the United Kingdom retained the mechanism when it exited the European Union.

Currently, the right of cancellation has found solid footing in the e-consumer protection frameworks of several jurisdictions and international regulators. It is well established in the European Union Consumer Rights Directive 2011 (CRD 2011),[11] the United Kingdom's Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 (CCR 2013),[12] South Africa's Electronic Communications and Transactions Act 25 of 2002 (ECTA 2002),[13] Australia's Australian Consumer Law of 2011,[14] etc. Although in a limited capacity, the FCCPA 2018 also introduced the right of cancellation. This will be analysed later in this chapter (6.2.1). Before making this analysis, it is important to understand the position of the Nigerian contract law system on the right of cancellation. This will facilitate a better understanding of the FCCPA 2018's limited approach to this mechanism.

6.2: The Right of Cancellation under the Nigerian Legal System.

Chapter two informed this thesis on the influence of English contract law on the Nigerian contract law system. Using judicial precedents, it showcases the prominence of foundational contract law principles in the country and the reluctance of the judiciary to intervene into them. Another of these principles is *pacta sunt servanda* (the pacta principle), another contract law principle with solid roots in Nigeria, is also relevant here. As upheld by several Nigerian judicial precedents,[15] this principle echoes that contracting parties are free to enter into contracts. However, once a contract is formed, parties cannot unilaterally release themselves from it as "agreements must be kept."[16] The pacta principle is founded on the state's trust in the contracting parties to determine terms that benefit them before

[10] Department of Business, Energy and Industrial Strategy, 'The Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 Accessed at https://www.gov.uk/government/publications/statutory-report-on-the-implementation-of-the-consumer-contracts-regulations-2013 on 17 January 2024

[11] Directive 2011/83/EU, Article 9 – Article 16

[12] SI 2013/3134, Part 3

[13] s.44

[14] (Cth) sch 2, s.82

[15] Sonnar (Nigeria) Ltd. & Anor v. Partenreedri M. S. Nordwind Owners of the Ship M. V. Nordwind & Anor (1987) LPELR-3494(SC). See also A.G. Rivers State V A. G. Akwa Ibom State & Anor (2011) LPELR - 633 (SC).

[16] *ibid*

concluding the contract. Therefore, the state is reluctant to intervene or allow unilateral exit (such as that allowed by the right of cancellation) unless in extreme circumstances such as the impossibility of performance,[17] frustration of contract,[18] illegality of contract[19] or *force majeure*.[20] None of which includes e-consumer contracts.

This neglect signals that the Nigerian courts fail to acknowledge that due to the peculiarities of the digital market, e-consumers are often without equal bargaining powers when contracting, therefore, their contracting decisions might not be as autonomous as presumed by the state. Several countries and international regulators[21] recognised this exposure and introduced cancellation rights, consequently making e-consumer contracts exceptions to the pacta principle.[22] Nigerian e-consumers should also be afforded this protection.

Despite the reluctance of the Nigerian court to intervene in the pacta principle, the FCCPA 2018 introduced a right of cancellation, this chapter moves to examine the FCCPA 2018's provisions on this mechanism to determine the protection level it offers Nigerian e-consumers.

6.2.1: The FCCPA 2018's Right of Cancellation.

Section 120 of the FCCPA 2018 provides as follows –

> "(1) A consumer shall have the right to cancel any advance booking, reservation or order for any goods or services, subject to the reasonable charge for cancellation of the order or reservation by the supplier or service provider.

[17] Ebe v. Cop (2008) LPELR-984(SC). See also Intl Textile Ind. (Nig) Ltd v. Aderemi & Ors (1999) LPELR-1527(SC).
[18] Malik v. Kaduna Furniture & Carpets Co. Ltd (2016) LPELR-41308(CA)
[19] Agbaje & Ors. v. Bankole & Ors (1971) LPELR-15512(SC)
[20] Gold Link Insurance Company Ltd VS Petroleum (Special) Trust Fund (2008) LPELR-4211 CA.
[21] The European Union and several jurisdictions, particularly South Africa and the United Kingdom.
[22] Luzak J., 'To Withdraw or Not to Withdraw? Evaluation of the Mandatory Right of Withdrawal in Consumer Distance Selling Contracts Taking into Account Its Behavioural Effects on Consumers.' [2014] 37 Journal of Consumer Policy, 91. See also Rott P., 'Information Obligations and Withdrawal Rights', in Twigg-Flesner (eds), *The Cambridge Companion to European Union Private Law. Cambridge Companions to Law*, (Cambridge University Press, 2010) 187. For South Africa, please see Huyssteen V., Louis F., and Catherine J., *Maxwell. Contract Law in South Africa* (Kluwer Law International BV, 2021).

(2) For the purpose of this sector, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to –

(a) the nature of the goods or services that were reserved, booked or ordered;

(b) the length of notice of cancellation provided by the consumer;

(c) the reasonable potential for the supplier or service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice, and the time of the cancelled reservation, booking or order: and

(d) the general practice of the relevant industry.

6.2.1.1: Limited Scope of the FCCPA 2018's Right of Cancellation.

The FCCPA 2018's right of cancellation is limited to orders for goods and services. This right is only available to consumers within a short period between the conclusion of the contract of purchase and the possession of the goods. For e-consumers, this means that once purchased goods are delivered, the right to cancel lapses. This thesis considered whether the use of "order" here extends to the post-delivery period, however, this consideration was discarded because of the *edjudem generis* rule of interpretation, an interpretation of statute tool commonly used by Nigerian courts.[23] This rule requires that general statutory words should be interpreted in connection with the class of words they appear with. "Order" in s.120 was used together with "reservation" and "advanced booking," therefore it is reasonable to interpret that the FCCPA 2018 cancellation rights only apply to the pre-delivery period as reservation and advanced booking are pre-delivery activities for services, particularly entertainment and hospitality services.

[23] Bronik Motors Ltd & Anor v. Wema Bank Ltd. (1983) JELR 46432 (SC). See also General Muhammadu Buhari v Alhaji Mohammed Dikko Yusuf (2003) LCN/3084(SC).

Limiting the FCCPA 2018's right of cancellation to the pre-delivery period is a significant limitation that makes it different and less effective than the conventional right of cancellation, which has improved e-consumer protection in other jurisdictions, as discussed above. This limitation defeats several known advantages of the right of cancellation. One of the known advantages of the right of cancellation is that it corrects ineffective contracts concluded due to e-consumers' inability to physically assess and access goods before delivery.[24] The CRD 2011, a leading framework on the right of cancellation, echoed this advantage when justifying introducing this mechanism to protect European distance contracts consumers (which include e-contracts). The directive highlighted that because e-consumers are unable to see goods before contracting, they should be allowed to physically test and inspect the goods to the extent necessary to establish the nature, characteristics and value of the goods, and decide whether to uphold the contract or cancel it.[25]

Admittedly, information asymmetry cannot be completely cured with a physical assessment of goods, however, it reduces it. Because traditional consumers enjoy this advantage when purchasing in the physical market, it is safe to assume they are better positioned to make informed decisions than e-consumers purchasing online.[26] To create adequate protection and equality for all consumers regardless of their medium of contracting, e-consumers should be allowed to exit contracts after they have had the opportunity to examine purchased goods.[27] Therefore, limiting the cancellation period to the pre-delivery period, as done by the FCCPA 2018, defeats the essence of this mechanism itself, consequently affecting its efficacy.

Another advantage of this mechanism that could be affected by this limitation is the development of the digital market. Chapters one and two informed this thesis on the slow development of the Nigerian digital market. They revealed that one of the reasons for this slow development is that Nigerian e-consumers have little trust and confidence in the market. E-consumers are less likely to purchase when they are unsure of how much they will value

[24] Borges G and Irlenbusch B., (n.7) 84.
[25] CRD 2011, recital 37.
[26] Hellwege, (n.9) 536
[27] A contract is inefficient if the cost of a consumer contract exceeds its benefits to the consumer– Eidenmüller (n.4), 5.

the goods they receive.[28] The inability to briefly examine the goods and make a rough value estimate might deter them from purchasing from the digital market. European legislators have been able to use the right of withdrawal to incentivize European consumers to engage with the digital market by lowering their transaction risks, and ensuring they are able to try out goods, assess the value and make informed decisions on whether they want to be bound by it. This has contributed to the development of the European digital market.[29] By not giving Nigerian e-consumers the opportunity to do this, the FCCPA 2018 cancellation rights take away a crucial element of what makes this mechanism effective. This will affect the adoption of the FCCPA 2018 right of cancellation, which will consequently take away any potential positive impact on the development of the Nigerian digital market.

Another advantage that could be impacted is the positive impact of the right of cancellation in reducing manipulative marketing practices.[30] Nigerian e-sellers engage in manipulative marketing practices because they know once e-consumers accept the goods, they cannot cancel again. They are also aware that these marketing practices and exaggerations will not be noticed until physical possession of the goods has been received. Even when discovered, the access to justice costs would most likely deter e-consumers from pursuing claims for low-value goods.[31] Limiting the right of cancellation to the pre-delivery period allows e-sellers to continue these practices. A right of cancellation that extends beyond the delivery period would take away e-sellers' incentive to deliver low-quality goods, knowing fully well that e-consumers would be able to cancel these contracts. It is important to mention that this only helps when contracting with legitimate e-sellers, fraudulent sellers, posed as e-sellers, will not refund payments regardless of whether there is a right of cancellation or not. Fraud is outside the scope of this thesis, so this will not be explored further.

[28] Ben-Shahar O., and Posner E., 'The Right to Withdraw in Contract Law' (2011) The Journal of Legal Studies, 115–148, p.115.
[29] Luzak (n.22), 94
[30] See chapter 2.2.5 for more on this.
[31] Olusoji James George *et al.,* 'Risk and Trust in Online Shopping: Experience from Nigeria' (2015) 11 International Journal of African and Asian Studies 70-75.

As currently constructed, the FCCPA 2018's provisions do not reflect the advantages discussed above. Admittedly, it protects click-happy e-consumers,[32] who, on discovering the error of their purchase, can cancel the contract before the goods are delivered. However, this group of consumers are only a small part of Nigerian e-consumers. The Act also failed to provide clarity on goods delivered in part. It remains unclear whether the cancellation period ends at the delivery of the first part or the last part. All of these are gaps that needs to be addressed for effectiveness. It is important to extend the scope of the FCCPA 2018 right of cancellation to ensure that all e-consumers are protected and that these uncertainties are removed. The need to extend beyond the pre-delivery period and to proffer clear rules on other issues ancillary to the cancellation period is recommended. 6.3 will make these recommendations.

6.2.1.2: Cancellation Charges.

The FCCPA 2018 allows sellers to penalise consumers for cancelling by charging them cancellation charges. The rationale for this might be that the lawmakers are trying to deter consumers from abusing this mechanism. This sits well with one of the criticisms of the right of cancellation, where academics[33] have argued that the mechanism enables consumer abuse. It was argued that e-consumers could act opportunistically and cancel contracts even if he does not make uninformed decisions and there is nothing wrong with the delivered goods.[34] A common example is the "retail borrowing" issue currently plaguing the United Kingdom's fashion industry. This was said to be the result of the right of cancellation, which allows consumers to purchase clothes, use them and return them within cancellation periods.[35] Admittedly, these are genuine concerns, but the risk of consumers acting opportunistically does not justify denying e-consumers with genuine, the protection of this mechanism. This will be the consequence of imposing cancellation charges.

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[32] Click-happy circumstances are situations when consumers make purchases they regret later mainly because of their financial position. - Borges G and Irlenbusch B., (n.7) 84.

[33] Loos M., 'Rights of Withdrawal' in Howells G., and Schulze R., (eds) *Modernising and Harmonising Consumer Contract Law* (Sellier de Gruyter, 2009), 258

[34] *ibid*

[35] Calcabrini A., *et al.,* '"*Free Returns"-Reducing Returns in the Online Fashion Industry'* (Project, London School of Economics and Political Science 2020). See also Saarijarvi H., Sutinen U., and Harris L., 'Uncovering Consumers' Returning Behaviour: A Study of Fashion Ecommerce' (2017) 27(3) The International Review of Retail, Distribution and Consumer Research, 284.

Research into e-consumer behaviour towards cancellation charges found that e-consumers already have a perception of loss when they have to cancel their purchase contract.[36] This loss has been traced to ancillary commitments to the contract, the unwillingness to waste transaction costs already committed to the contract, etc. The European Commission also noted this as one of the reasons for not including cancellation charges[37] in their consumer directives.[38] Allowing e-sellers to impose cancellation charges will affect the efficacy of this mechanism for Nigerian e-consumers. It is unlikely that Nigerian e-consumers, who already feel a sense of loss for having to cancel contracts concluded using expensive transaction costs, would be willing to incur further costs by paying to cancel it. Of course, it is understandable that the risk of abuse should be addressed. However, the negative effects that follow cancellation charges could lead to total neglect rather than reduce abuse as intended by the lawmakers.

To tackle this issue, e-sellers can monitor consumer behaviour and ban opportunistic e-consumers from their platform or website. Also, as will be discussed in 6.3.5, if the cancellation right is extended to the post-delivery period, e-consumers should be made liable for any excessive use during the cancellation period as done by the CRD 2011 and CCR 2013.[39] That is a more functional way to reduce the risk of consumer abuse, rather than imposing penalty charges. Consumer protection mechanisms should prioritise protecting consumers over worrying about e-sellers' exposure to abuse, especially because, in this case, seeking to protect e-sellers would significantly affect the efficacy of a critical consumer protection

[36] Borges G and Irlenbusch B., (n.7) 84.

[37] European Commission, 'Consumer Protection in the Internal Market' (Special Eurobarometer) (October 2008), 58. See also European Commission, 'Consumer Protection in the Internal Market' (Special Eurobarometer) (September 2006) 36 and 252.

[38] Twigg-Flesner C., & Schulze R., 'Protecting Rational Choice: Information and the Right of Withdrawal' in Howells G., *et al*. (eds) *Handbook of Research on International Consumer Law*, (Cheltenham: Edward Elgar, 2010) 155.

[39] In a similar approach, the CRD 2011 and CCR 2013 acknowledged this risk of abuse and provided that e-consumers can use the goods only to the extent needed to establish the nature, characteristics and functioning of the goods. European and United Kingdom e-consumers are made liable for any excessive use that diminishes the value of the goods. - CRD 2011, recital 47 and Art. 14(2). For the United Kingdom, see CCR 2013, r.34(9).

mechanism. E-sellers are already the powerful party,[40] protecting e-consumers should be the priority, and it should trump concerns for e-sellers exposure to the risk of abuse.

So far, this thesis is steering towards recommending the complete removal of cancellation charges; however, the FCCPA 2018 guidance tools on determining cancellation charges are worth examining as they might give a better understanding into the lawmakers' intention for adding cancellation charges. It will also assist in identifying loopholes, which will allow better recommendations on how to increase the effectiveness of the right of cancellation.

As provided in s.120(2), the tools for determining cancellation charges operate together and must be jointly considered by Nigerian e-sellers before deciding what qualifies as a reasonable cancellation charge for each transaction. The first tool, which is in s.120(2)(a), requires sellers to reasonably consider the nature of the goods ordered in determining cancellation charges. Under this provision, cancellation charges for an order for personalised goods made to the specification of an e-consumer (such as a customised t-shirt) or goods whose order processing requires combination with other goods and cannot be separated from each other post-combination would be higher than the cancellation charges for an order to purchase a pair of sneakers. The FCCPA 2018 provisions on this guidance tool are too broad. If the intention is to impose cancellation charges on specific categories of goods, the Act could have given a more specific description of these goods rather than using a generic phrase like "nature of goods", which covers all consumer goods. An example is when European legislators sought to limit the right of cancellation for some categories of goods, they introduced specific provisions exempting these categories from the umbrella of the right of cancellation.[41] Of course, the FCCPA 2018 is not seeking to limit goods here, however, the same logic applies. If the intention of Nigerian legislators is to control how charges are levied based on the nature of the goods, they should have aimed for more legal certainty and provide guidelines and rules on how to categorise consumer goods and regulate in better details how cancellation charges are applied to each category.

[40] Rezabakhsh B., *et al.* 'Consumer Power: A Comparison of the Old Economy and the Internet Economy' (2006) 29(1) Journal of Consumer Policy, 3-36.
[41] CRD 2011, Art. 16. Similar provisions can be found in the United Kingdom CCR 2013, r.28

The second tool requires sellers to consider the "length of notice of cancellation provided by the consumer" when determining cancellation charges. This means considering the timeframe between the order period and the receipt of the cancellation notice. The intent here is to ensure that the pre-delivery costs incurred by e-sellers are recouped. These costs include packaging costs, storage costs, payment gateway costs, administrative costs, etc. Charges here are expected to be determined based on the order processing stage before cancellation is requested. Cancellation requests made on the projected delivery day would incur more charges than those requested immediately after an order is made. With the former, delivery and packaging costs are chargeable; with the latter, only payment gateway costs would be chargeable. One concern with this is the lack of transparency and verifiability – i.e., the difficulty of knowing if an e-seller actually incurs the cost demanded as cancellation charges. E-sellers order processing system differs, some are more complicated than the other. To maximize their profit and discourage e-consumers from exercising this right of cancellation, Nigerian e-sellers may claim that order processing commenced immediately an order is placed and that packaging and related costs are immediately incurred. These claims might not be true, but it would be hard for e-consumers to verify their veracity. There are so many uncertainties and room for manipulation with this guidance tool that it is expected that it could be used as an instrument to impose excessive cancellation charges, consequently discouraging Nigerian e-consumers from using the right of cancellation.

The third tool requires sellers, acting diligently, to reasonably consider the potential of finding an alternative consumer, when determining cancellation charges. Goods that cannot be resold to another consumer, such as personalised goods, would carry high cancellation charges in comparison to retail goods that can be resold. Furthermore, the discretionary powers given to e-sellers here are also excessive and leave room for abuse. It appears that the intention of Nigerian lawmakers' here is to protect goods that cannot be resold and ensure e-sellers get their payment for such goods. In that case, rather than imposing cancellation charges on all consumer goods, a better approach would have been to remove those goods from the protection offered by the right of cancellation (further recommendations on this made in 6.3.7). Similar approach was taken by the United Kingdom and the European Union when they exempted goods of certain nature, such as those that are

liable to deteriorate rapidly, personalised goods etc., from the protection of the right of cancellation.[42]

Finally, the last guidance tool requires e-sellers to consider the general practice of the relevant industry. This is the most concerning guidance tool because e-sellers control and dictate what qualifies as market practices and traditions. All it takes is for the powerful e-sellers in the Nigerian market to create a way of determining cancellation charges, and all other e-sellers would follow, making such way of determining cancellation charges, regardless of how arbitrary and unfair, the market practice.

The examination of these tools reveals several uncertainties that led this thesis to question the efficacy of the FCCPA 2018 right of cancellation. Furthermore, even with these tools, determining what qualifies as a reasonable charge remains largely at the sellers' discretion. As discussed so far in this thesis, access to justice is an issue for Nigerian e-consumers, so it is highly unlikely that they will challenge e-sellers' "rulings" on what qualifies as reasonable charges. As will be shown in 6.3.2, the essence of recommending the right of cancellation in this thesis is to provide Nigerian e-consumers with a self-enforceable remedy and reduce the negative effects of access to justice issues in the country. Increasing costs and leaving the cost determination to e-sellers brings back the need for e-consumers to approach the courts to determine whether these discretionary powers have been fairly exercised. This leads back to the access to justice issues that this mechanism was introduced to tackle. All of these raise questions on the effectiveness of the FCCPA 2018 right of cancellation, therefore, the best choice remains a complete removal of cancellation costs and an extension of the right of cancellation as recommended in 6.3 below.

6.2.1.3: Exercise of Cancellation Rights.

Another gap of the FCCPA 2018 right of cancellation is the lack of clear rules on how the right is to be exercised. Chapters four and five identified the dearth of private law remedies for breach of both the implied terms and the unfair terms rules. They pointed out that the access to justice issues in Nigeria (discussed under 2.2.6) reduces the effectiveness of the traditional

[42] ibid

court system as a redress channel for e-consumers and concluded that there is a need for self-enforceable statutory remedies exercisable without recourse to judicial interpretations and the courts. This chapter mentioned earlier that the intent is to explore ways in which the FCCPA 2018 right of cancellation can be improved so as to achieve the level of effectiveness it has in other jurisdictions. The right of cancellation, as existing in other jurisdictions, is unilaterally enforced without the need to give any reason for cancellation or approach the courts. Admittedly, there are situations where dispute resolution maybe needed. One of these is where e-sellers refuse to accept the exercise of cancellation rights. However, the cost involved will be significantly reduced because this mechanism is a consumer right, a breach of which would allow Nigerian e-consumers to approach the Federal Competition and Consumer Protection Council (FCCPC) free of charge to enforce their right. Even when they have to approach the courts, cost will be reduced because it will be through declaratory actions which are cheaper and faster.

To realise its self-enforceable advantage, frameworks on the right of cancellation must be as clear and as detailed as possible. It is important to ensure that there is no room for uncertainties that would require judicial intervention. As currently constructed, the FCCPA 2018's provision on the right of cancellation leaves open several uncertainties on how it is exercised. Some of these uncertainties lead to questions such as what qualifies as adequate cancellation notice? Can e-sellers mandate the channel to which this notice is communicated? Must the notice be in writing, or can it be given orally? Should these notices comply with formal requirements? Etc.

The current position of the law is that notices should follow the mode of contracting.[43] The majority of the purchase contracts in the digital market are written contracts, therefore, notices or variations to them are required to be in writing.[44] With this, cancellation through other mediums, such as telephone calls to e-sellers might be rejected as inadequate by e-sellers. Applying formal requirements to cancellation notices could create uncertainties surrounding validity of notices. This thesis is concerned that e-sellers might use this

[43] Bjou (Nig) Ltd. v. Osidoroewo (1992) 6 NWLR (Pt.249) 463 @ 649
[44] Baliol (Nig) Ltd v. Navcon (Nig) Ltd (2010) LPELR-717(SC)

opportunity to impose complex or tedious notification requirements to discourage e-consumers from activating their protection under this mechanism. This would lead to consumer losing out on the benefits simply because they did not use a particular medium to communicate cancellation notices. 6.3.2 will make recommendations on how this issue can be addressed.

6.2.1.4: Parties' Obligations Post-Cancellation.

Even though it limited cancellation to the pre-delivery period, the FCCPA 2018 failed to address post-cancellation obligations. An example is when goods are cancelled at the point of delivery, the goods will have to be sent back, it is unclear who is responsible for such return costs. With the Act allowing e-sellers to charge cancellation costs, it can be reasonably expected that e-sellers will make e-consumers pay for this. As shown above, this is not a desired position. The Act also failed to address refund timelines and whether returns must be made before refund or concurrently. With all these uncertainties, there are risks of abuse. There is a need for clear rules on how post-cancellation responsibilities are shared between e-sellers and e-consumers. As maintained earlier, to preserve the self-enforceable advantage, all possible uncertainties must be taken care of. 6.3.5 will make recommendations on these issues.

6.2.1.5: Effects of Cancellation on the Contract.

Another concern with the FCCPA 2018's right of cancellation is the absence of clear rules on the effects of cancellation. While it might appear obvious that cancellation ends the obligation to purchase, there are ancillary obligations in the contract that would remain valid, for example, the purchase of a product which was sold for a discount because the e-consumer subscribed to marketing communications. The provision of marketing communications continues even after cancellation. Ancillary contracts might deter e-consumers from exercising their cancellation rights. There is a need for clear rules on the effect of exercising the FCCPA 2018's right of cancellation on consumer contracts. 6.3.4 will make recommendations on this issue.

One of the key reasons for introducing the right of cancellation for e-consumers in the European Union regulations is to facilitate the development of its internal digital market. According to the European Commission, withdrawal (cancellation) rights encourage consumers to engage in e-commerce activities, yielding immense growth for the European digital market.[45] Therefore, reforms that learns from the European Union's right of cancellation should be encouraged if Nigeria seeks to improve participation in its digital market. This thesis will recommend how the FCCPA 2018 right of cancellation can reformed to achieve the level of effectiveness expected from the right of cancellation as a consumer protection mechanism.

6.3: Reforms - Amending the Scope of the Right of Cancellation under the FCCPA 2018.

Having examined the FCCPA 2018's right of cancellation and the limitations affecting its effectiveness, this sub-chapter will examine how this mechanism can be extended and reformed to achieve efficacy and effectiveness. These reforms will be made with careful consideration to the peculiarities of Nigerian e-consumers and the issues identified so far in this thesis. In making recommendations, this chapter will learn from the European Union and two jurisdictions, South Africa and the United Kingdom. Before introducing cancellation rights, the United Kingdom and South Africa had similar dedications to the contract law principles discussed above, therefore they are the perfect choice to learn from here. The justification for looking at the European Union for guidance is that the United Kingdom's right of cancellation is the European Union right of withdrawal domesticated from the CRD 2011. As stated in 1.4, examining the European Union's CRD 2011 will give a much-needed background to the provisions of the CCR 2013 and would allow effective recommendations here.

Furthermore, the United Kingdom and South Africa introduced cancellation rights over a decade ago, and despite some challenges, available research reveals that it has been a helpful mechanism for their e-consumer protection.[46] In the United Kingdom Department of

[45] European Commission, (n.37) 298. See also Ben-Shahar and Posner (n.28) 115–148.

[46] For South Africa, see - Wenette J., 'The Electronic Communications and Transactions Act: Consumer Protection and Internet Contracts.' (2004) 16(4) SA Mercantile Law Journal, p.556-567. For the United Kingdom, see

Business, Energy and Industrial Strategy (BEIS)'s first five-year review of the implementation and effect of the CCR 2013,[47] it was empirically gathered that the right of cancellation improved e-consumer confidence in the United Kingdom. Most of the BEIS's survey respondents confirmed that the availability of the right of cancellation has improved their confidence in the digital market. They highlighted the opportunity to reflect on the contract, cancel without penalty, and receive a full refund as a key contributor to its use and increase in confidence.[48] As mentioned above, an important reason for the right of cancellation in these legal frameworks are to facilitate the digital market's development by encouraging consumers to engage with the market. An approach that has yielded immense growth, particularly in the European Union.[49] If Nigeria seeks to increase participation in its digital market, a similar approach to e-consumer protection should be encouraged.

Before recommendations are made, there is a need to acknowledge the excessive intrusion of this mechanism on the contract law principles. This mechanism, as sought to be extended, is basically allowing e-consumers to walk away from contractual commitments with no penalty. With this level of intrusion, caution is needed when recommending the right of cancellation into any jurisdiction. The construction of the law on the mechanism should not be overly intrusive, nor should it be too restrictive, the latter being the current situation in Nigeria. Excessive intrusion creates undue imbalance, and excessive restrictiveness affects effectiveness.[50] There is a need for a balance, framework on cancellation rights should be structured to achieve these specific purposes. Within the context of this thesis, the purposes for recommending the extension of the FCCPA 2018 right of cancellation are in two folds – to correct uninformed purchase decisions taken by Nigerian e-consumers because of the information asymmetry existing in the Nigerian digital market. These asymmetries are tied to the nature of the digital market (as discussed in 3.2) and the Nigerian social environment (as

Fletcher A., *et al.,* 'Consumer Protection for Online Markets and Large Digital Platforms' (2023) 40 Yale Journal on Regulation, 875.

[47] Department of Business, Energy and Industrial Strategy, The Statutory Report on CCR 2013 (n.10)

[48] ibid, p.17

[49] Ben-Shahar and Posner (n.28), 115–148.

[50] Hellwege (n.9) 511

discussed in 2.2). The second is to provide a self-enforceable remedy for e-consumers in Nigeria to address the access to justice issues in the country (the reform purposes).

Hellwege had a very interesting approach to introducing a right of cancellation that is inclusive, not overly intrusive, and not too restrictive.[51] This thesis draws from his recommendation. He recommends that when introducing the right of cancellation into any market, lawmakers should focus on - a) introducing an effective definition for the right, its scope and exceptions, b) ensuring that consumers are informed of the right, c) clearly defining how the right is to be exercised, d) addressing issues related to cancellation period e) clearly defining the effect of cancellation on the purchase contract, and f) defining restitutions related to cancellation. These defined legal problems will guide this chapter in making its recommendations for reforms. In addition to his suggestions, this thesis will also recommend rules that clearly define e-sellers and e-consumers' post-cancellation obligations.

It is key to mention that the recommendations presented here are tailored for e-consumer contracts. This thesis admits that this mechanism also plays a crucial role in protecting traditional consumers, however, traditional consumers are outside the scope of this thesis, so they are not considered. At this point, the chapter moves to recommending how the FCCPA 2018's right of cancellation can be reformed.

6.3.1: Extending the Scope of Application.

One of the criticisms of the FCCPA 2018's right of cancellation in 6.2.1 is its' narrowness. The need to extend the mechanism's scope and address several specific questions on how the rights can be improved for effectiveness was discussed. This subchapter focuses on this extension with the goal of bringing the right within the scope of the conventional right of cancellation, which has been effective in other jurisdictions.

6.1 pointed out that a key component of this mechanism is allowing consumers to exit purchase contracts and their obligations under it without penalties, within a period of receiving purchased goods. As shown in 6.2.1, the FCCPA 2018's right of cancellation significantly differs from the afore-described right of cancellation because the right expires at

[51] Hellwege (n.9) 513

delivery. There is a need to extend the right of cancellation to cover the post-delivery period so that e-consumers can have the opportunity to physically examine the purchased goods and determine its value and suitability before being bound by the contract. This will correct some of the disadvantages suffered by Nigerian e-consumers as identified so far in this thesis, particularly as it relates to correcting uninformed purchase decisions, reducing their exposure to manipulative marketing practices, etc.

6.3.2: Clear Rules on how Nigerian E-Consumers will exercise the Right of Cancellation.

The next issue to be addressed is how this mechanism can be activated and used by Nigerian e-consumers. 6.2.1 addressed the importance of having clear rules on how this right is to be exercised. It echoes that clear rules provide certainty, reduce the need to approach the courts, and facilitate self-enforcement advantages. From the provisions of the FCCPA 2018, it is safe to assume that this right is triggered once e-consumers notify e-sellers of their intention to cancel the contract. This is the same approach taken by the European Union and the United Kingdom for activating the cancellation rights under their respective laws.[52] However their legal frameworks presented straightforward step-by-step processes on how this notice should be given and what qualifies as adequate notice,[53] something the FCCPA 2018 failed to do. Starting with formal requirements, efficacy of the right of cancellation would be better achieved without formal requirements on cancellation notices. European legislators took a similar approach in the CRD 2011.[54] To achieve effectiveness and address the concerns raised in 6.2.1, the FCCPA 2018 should be amended to expressly provide that all e-consumers need to activate this right is to notify e-sellers of their intention to cancel and that no formal requirements should be attached to notification.

Furthermore, to prevent issues emanating from missed messages and ineffective communication channels, lawmakers should mandate that e-sellers make available effective and easy-to-use mediums of cancellation or communicating notice of cancellation. It can also recommend easy cancellation mediums, such as the inclusion of cancellation buttons on order

[52] The United Kingdom - CCR 2013, r.32(1) and the European Union - CRD 2011, Art.11(1)
[53] For the European Union, see CRD 2011, Art. 11(1). For the United Kingdom, see CCR 2013, r.32
[54] CRD 2011, Art. 11(1).

management pages for e-consumers to use in cancelling contracts. The CRD 2011 made similar suggestions when it recommended that e-sellers should dedicate a space on their website with a cancellation form for e-consumers' use. [55] The directive recommended that cancellation in the digital market will be more effective if notices are given by e-consumers using the said forms. This thesis, however, recommends an easier option: the use of cancellation buttons on order management pages. Once cancelled, e-sellers' should provide confirmation of cancellation for e-consumers' records. Cancellation buttons will minimize delay, remove the risk of missed messages, inadequate or unreasonable communication channels, and improve certainties as it can be automated. Another recommendation could be the use of model cancellation forms. The advantages of model cancellation forms are the uniformity of cancellation notice across the market, increased legal certainty and increased ease of usage overtime, because with every use, e-consumers are expected to be more familiar with them. The CRD 2011 and CCR 2013 offered discretional model cancellation forms.[56] Despite the advantages of model cancellation forms, this chapter prefers the cancellation button option, given how easy and simple it is to use it. With this option, all that is needed to activate the right of cancellation is to click a button.

Caution must be exercised with these recommendations; the lawmakers must ensure that they remain suggestions and that they are not mandatory so that they do not become formal requirements. What should be mandated is the provision of adequate communication channels. This is because, as echoed above, there should be no formal requirement for cancellation notices. The recommended options are only suggestions on tools that can help achieve ease of notification and should not invalidate other means of notification. E-consumers should still be able to cancel through whatever medium e-sellers receive communication through. The United Kingdom took a similar approach when it provided that e-consumers should not be forced to use its model cancellation forms and that such provisions do not invalidate other ways of communicating notice[57]

[55] CRD 2011 11(3) and CCR 2013, r.32(4)
[56] CRD 2011 (1) and CCR 2013, r.32(3)
[57] CCR 2013, r.32(4)

To address the concerns of some research that a notification model of activation is inefficient as e-consumers sometimes forget to cancel within cancellation periods consequently losing their right, this chapter considered whether Eidenmüller's suggestion of a confirmation model could be a better approach than a notification model. Unlike the notification model, where e-consumers are asked to give cancellation notices to activate the right, under the confirmation model, consumer contracts cancel automatically after the cancellation period unless e-consumers confirm the contract.[58] However, this was discarded because it increases transaction costs by requiring e-consumers to confirm every contract post-purchase, increases the burden on them to confirm, and creates market uncertainties for e-sellers. Furthermore, with the confirmation model, the same risk remains, e-consumers could also forget to confirm the contract. The efficacy of this mechanism is tied to e-consumers' ease of exercise, therefore, it is important that exercising and activating the right is easy, quick and leaves no room for uncertainties. The notification model does this more than the confirmation model.

6.3.3: Cancellation Period

The FCCPA 2018 cancellation period runs from the contract date till the delivery date. Cancellation period refers to the number of days e-consumers have to exercise their cancellation rights. Definitiveness in cancellation period removes uncertainties and gives e-consumers and e-sellers clarity on when cancellation rights are to be exercised and when it lapses. In dealing with cancellation periods, two questions arise – when should the cancellation period start? And what is the length of the cancellation period?

On the starting point of the cancellation period, there are two points to note – the start of the cancellation period and when to start calculating the cancellation period. To achieve effectiveness, the cancellation period should start from when e-consumers complete the order for the purchased goods. This is because even before delivery, e-consumers can recognize that they have made uninformed decisions or that the terms to which they have contracted are unfavourable to them, therefore, they should be able to cancel the contract

[58] Eidenmüller H., 'The Homo Economicus and the Law of Obligations: Challenges Posed by Behavioural Law and Economics' (2005) 60 Juristenzeitung, 222

even before delivery. On the cancellation timeframe, this should only start after e-consumers receive physical possession of the purchased goods. As mentioned in 6.2, the primary reason for cancellation rights is to allow e-consumers the opportunity to physically access and assess the purchased goods. This is only possible after they have received the goods. Also, delivery timelines differ based on e-sellers, the location of the goods, e-consumers' delivery choices, etc. If the calculation of the cancellation period runs from the contract's conclusion, there is a risk that any delayed delivery will reduce the time that e-consumers have to evaluate the contract for value. In worst cases, such period might even lapse before delivery is made, in such case, the purpose of the right of cancellation becomes defeated. There is also the risk that in a bid to bypass the possibility of e-consumers cancelling the contract, some Nigerian e-sellers' might delay performance and delivery till the end of the cancellation period. This will also defeat the objective of this mechanism; therefore, the calculation of the cancellation period should start from the time e-consumers receive purchased goods. The ECTA 2002, the CRD 2011 and the CCR 2013 took similar approaches. They all provided that cancellation periods should start from delivery dates.[59]

To prevent e-sellers' abuse, "receipt of goods" must be clearly defined by the lawmakers. Receipt should be tied to when e-consumers' nominated persons receive the goods' physical possession. Delivery at a delivery hub/delivery locker, a common practice in Nigeria, should not count as physical possession until the e-consumer collects the goods from the delivery hub/locker. This leads to the issue of what qualifies as physical possession and whether the receipt of delivery by another person at an e-consumer-nominated delivery address qualifies as "physical possession." Reasonably, delivery to another person at the exact e-consumer nominated delivery address should count as such delivery being made to the e-consumer because it can be presumed that such person has been nominated to receive the physical possession of the goods. Nigerian lawmakers can include protective buffers to protect against cases where e-consumers are unaware of the delivery. One of which can be mandating e-sellers to notify e-consumers that the delivery has been made to such person and the cancellation period should start 24 hours after such notification. Delivery to neighbours, security men or, onsite doorkeepers and facility managers should also require this protective

[59] ECTA 2002 s.44(1)a, CRD 2011 Art. 9(2)(b), and CCR 2011, r.30(6).

buffer to ensure maximum e-consumer protection. The focus of the lawmaker should be whether the delivery was made to the exact nominated premises and whether confirmation of delivery was communicated to the e-consumer. As mentioned above, to ensure the self-enforceable element of this right remains potent, Nigerian lawmakers must be as precise as possible, leaving little to no room for uncertainties.

Another issue that Nigerian lawmakers must address is cases where multiple goods are purchased in the same order or when the purchased goods have multiple pieces delivered differently. In these cases, physical possession should only be presumed when the last piece has been delivered, consequently, the cancellation period calculation should start when e-consumers receive physical possession of the last piece of the goods ordered. Furthermore, with goods that are supplied with services and such products can only be assessed for value after the ancillary services have been completed, the cancellation period calculation should start from the completion of such ancillary services. For example, if an e-consumer purchases with a wardrobe sold in parts with assembling services offered as an add-on. Normally, delivery of the wardrobe will usually be different from when the e-seller's handyman shows up to couple it. In this case, the cancellation period should start from the date that the assembling was completed, not when the e-consumer receives the physical possession of the wardrobe. The rationale for this is a reasonable one - the e-consumer would only be able to detect the wardrobe's actual value after assembling it. As stated in chapter five, the FCCPC need to use examples, scenarios and guidance notes to achieve efficacy here. Preciseness is not negotiable.

The second issue is the length of the cancellation period. There have been various suggestions on how to address this. Some clamoured for an unlimited cancellation period,[60] however, this thesis discarded those suggestions as they are impracticable and would have negative consequences on transaction costs. Also, unlimited cancellation means that contracts would remain inconclusive for a long time, affecting the market's functionality. Some have also

[60] Heck P., 'How About the Abuses that have Emerged in the Instalment Transactions?' (Proceedings of the Twenty-first German Lawyers' Conference vol II 1891) 192

suggested that the starting point should determine the length of the cancellation period.[61] For example, if the period is counted from the conclusion of the purchase contract, then a long cancellation period is justified. Loos gave a rather interesting argument that cancellation periods should start when e-consumers understand the complexity of the contract. However, how he intends to measure e-consumer understanding remains unclear in his work, therefore this thesis will disregard this argument. In fact, the notion of a short cancellation period will not be entertained at all in this research as it is not in the best interests of Nigerian e-consumers, given their various information issues.

This thesis also considered the use of several cancellation periods for different categories of goods, with the formula being, the more complicated and risk of latent defects, the longer the cancellation period. However, this was also discarded given the increased complexity and consequential information overload that might occur as e-consumers would have to be educated on each of these cancellation periods. As mentioned in chapter three, Nigerian e-consumers already suffer from information issues, therefore, consumer protection mechanisms should not be complicated with numerous categorisations. As echoed in 6.2.1, this mechanism should be straightforward, easy to use and without complications. Categorising cancellation periods would not achieve this intention. Latent defects can be handled with the implied terms analysed in chapter four or with statutory warranty periods. The European Commission also echoed that different cancellation (cooling-off) periods would complicate this mechanism and affect its effectiveness, so they introduced a uniform cancellation period for all consumer contracts. They highlighted the increase in compliance costs for traders and transaction costs for consumers as justification for this uniform cancellation period.[62]

Determining the right length for the cancellation period is very problematic given the varieties of consumer goods present in the market and the difference in their complexities. Also, e-consumers' decision-making varies. As mentioned in chapter three, it is simply impossible to

[61] Loos M., 'The Case for a Uniform and Efficient Right of Withdrawal from Consumer Contracts in European Contract Law', (2007) 15 ZEuP 5–36.
[62] European Commission, *Green Paper on the Review of the Consumer Acquis* (COM 774 final, 2006) 20. CRD 2011, recital 40.

cater for each and every Nigerian e-consumer's need, therefore, the focus should be on an average ordinary consumer and what reasonably protects them. To achieve efficiency, cancellation periods should be reasonably and practically sufficient for e-consumers to determine the value and efficacy of the contract for their interest.[63] Looking at the ECTA 2002, South Africa has seven days as the length of its cancellation period,[64] this thesis concludes that seven days is too short given that five of those days will be working days. E-consumers have lives to live, and jobs to attend to. There is a risk that they would not have enough time to assess the suitability and efficacy of both the purchased goods and the contract for their interests while trying to get through the work week. Therefore, the South African position was discarded, and this thesis turned to the European Union and the United Kingdom for guidance. Initially, with the Distance Selling Directive of 1997,[65] the European Union had seven days as its cancellation period. However, the European Union legislator changed this to 14 days under the CRD 2011[66] Even though the European Commission green and working papers and the guidance document to the CRD 2011 were silent on why this change was made, it has been suggested that this was done to increase the effectiveness of the right of cancellation for e-consumer protection.[67]

This chapter recommends the same fourteen days from the date of receipt of the goods as the cancellation period for Nigerian e-consumers. Fourteen days allows at least four non-working days, giving e-consumers sufficient time to evaluate the goods and the purchase contract. This chapter also considered whether public holidays, which account for 12 days in every calendar year, should be considered here. However, the exclusion of public holidays was discarded because it adds complexity to the computation of cancellation periods for e-consumers.

6.3.4: Effects of Cancellation on Purchase Contracts.

[63] Luzak (n.22) 94
[64] ECTA 2002, s.44
[65] Directive 97/7/EC
[66] CRD 2011, Art. 9(1).
[67] Luzak (n.22) 95

The European Union and the United Kingdom maintained that cancellation ends the obligations of the parties to perform the contract.[68] This thesis believes the same approach should be taken with the proposed right of cancellation, once exercised, parties should only be required to carry out their termination obligations as discussed in 6.3.5.

Finally, all ancillary contracts between the e-seller and e-consumer related to the contract being cancelled should also be cancelled. An example would be the contract for the assembling of a purchased wardrobe purchased as an add on from the e-seller, the cancellation of the contract for the purchase of the wardrobe should also extend to the contract for the assemble services.

6.3.5: Parties' Obligations at Cancellation.

As stated above, the effect of cancellation should be the entire contract's termination. When a contract is terminated, one of the approaches taken by Nigerian courts is to unwind the contract.[69] The overall objective of unwinding a contract is to put contracting parties, as far as possible, to what the Supreme Court called - *status quo ante contractum* (the state of affairs that existed before the contract).[70] This means putting the parties back, or closest, to the position they would have been in if the contract was never made. In this context, this means e-consumers should return purchased goods and e-sellers should refund the consideration received. However, this rule ignores ancillary transaction costs, such as delivery, packaging, and processing costs already incurred by the parties. Furthermore, unwinding the contract will also lead to more costs, given that the goods will have to be sent back, e-sellers will have to process refunds, etc. How this cost will be shared must be carefully provided for to remove uncertainties and abuse. As maintained above, provisions on this mechanism should be made as clear as possible.

[68] CRD 2011, Art. 12(a) and CCR 2013, r.33(1)a
[69] First African Trust Bank Ltd & Anor v. Ezegbu & Ors (1993) LPELR-1279(SC).
[70] ibid.

Nigerian lawmakers must keep two things in mind when enacting post-cancellation obligations rules. The first is e-consumers' attitude to cancellation costs,[71] and the second is that the primary objective of the right of cancellation is e-consumer protection. Studies have shown that e-consumers are loss-averse. When there is high cost involved with a consumer protection mechanism, they neglect the mechanism.[72] Therefore, Nigerian lawmakers must make sure the e-consumers' cost required for using this mechanism is reduced to the barest minimum. An example within the context of the right of cancellation is that the cost associated with returning goods should be carried by e-sellers, etc. For ease of analysis, this sub-chapter will make its recommendations on post-cancellation obligations separately for both e-sellers and e-consumers, starting with e-sellers.

6.3.5.1: E-sellers Cancellation Obligation.

The primary e-sellers' obligation at cancellation is obvious, they must return all payments and consideration paid for the contract to the e-consumer. As seen with the CRD 2011,[73] the CCR 2013[74] and ECTA 2002,[75] this obligation has been uncontroversial and has not been challenged by either academics, the courts, or European lawmakers.[76] However, in introducing this rule, Nigerian lawmakers must ensure that, to prevent abuse, the processes surrounding refunds are as precise as needed to prevent abuse. Starting with the refund timeline, all refunds must be made without delay after the receipt of the returned goods or, in case the goods have not been dispatched, as soon as the cancellation notice has been received. This is where the cancellation button recommended in 6.3.1 becomes more helpful, it gives certainty on when the refund period starts in cases where cancellation occurs before the goods are delivered. Furthermore, to ensure certainty, there is a need to impose a maximum refund timeline.

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[71] See 6.2.1

[72] Camerer C. *et al*., 'Regulation for Conservatives: Behavioural Economics and the Case for "Assymetric Paternalism" (2003) 151 University of Pennsylvania Law Review, 1211.

[73] CRD 2011, Art. 13(1).

[74] CCR 2013, r.34.

[75] ECTA 2002, s.44(3).

[76] European Commission (n.62) 3. See Hellwege (n.9) 556.

The European Union and the United Kingdom mandated that all refunds must be made within 14 days.[77] South Africa introduced a longer refund period of 30 days.[78] This thesisrecommends that just as in the European Union and the United Kingdom, the Nigerian refund period benchmark should be fourteen days. The decision to stay away from South Africa's position is that e-consumers might want to use the refund to make another purchase, and they should not have to wait too long for their refund.

One point to note is that e-consumers must return the goods before the refund period kicks in. The CRD 2011 in 13(3) took a similar position and allowed e-sellers to withhold refunds until the goods had been returned. This has been met with criticisms on the basis that refund and return obligations should be done concurrently.[79] It was argued that with the right of cancellation seeking to unwind the contract, concurrent restitution is fundamental to unwinding mutual contracts, therefore once the notice of cancellation is given, e-consumers and e-sellers' should unwind within the same period by returning and refunding within the same timeframe.[80] This thesis rejects these criticisms because it opens e-sellers to the risk of abuse by fraudulent e-consumers who would receive refunds and not return the goods. This criticism does not consider the peculiarities of the Nigerian environment and the harsh realities that there are fraudulent e-consumers, necessitating the need to protect e-sellers from them. Furthermore, as will be shown in 6.3.5.2, there are cases where e-sellers would need to make deductions for excessive use. This will not be possible if refunds and returns are made concurrently.

Nigerian lawmakers also need to set clear rules on how refunds are to be made. E-consumers should be refunded through the same means to which they made the payment. There is a popular marketing structure in Nigeria where e-sellers offer e-consumers the right to return on the condition that they only get back vouchers that can be used on their website. With this, they are making sure e-consumers spend the transaction fee with them regardless. This

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[77] CRD 2011, Art. 13(1) and CCR 2013, r.34(5).
[78] ECTA 2002, s.44(3).
[79] Lukas, 'Contracts concluded outside of business premises' in Jud B. and Christiane Wendehorst C., (eds.) *Neuordnung des Verbraucherprivatrechts in Europa?: Zum Vorschlag einer Richtlinie über Rechte der Verbraucher? (Reorganization of Consumer Private Law in Europe?: On the Proposal for a Directive on Consumer Rights*) (MANZ Verlag Vienna, 2009) 94.
[80] Hellwege (n.9) 561.

should not be allowed with the right of cancellation. Refunds should be made to the same method used for payment. If e-consumers pay with gift cards, they should get refunded with gift cards, and if they pay with dollar cards, they should be refunded in dollars and not in Naira. Refunds should be *restitutio ad integrum* (restoration to original condition) in all its true nature.

Finally, with the awareness that high cancellation costs may affect the efficacy of this mechanism, refunds should be total unless in case of deduction for excessive use (discussed in the next sub-chapter). Total refund means that the cost of delivery, cost of processing payments and orders, etc should all be carried by e-sellers once a contract is cancelled.

6.3.5.2: E-consumers' Cancellation Obligation.

It is beyond doubt that e-consumers must return the goods at cancellation. It is recommended that the return period should be 14 days from the cancellation date, which is the date of sending the cancellation notice. Admittedly, this is much more than the refund period, but as explained in 6.3.3, e-consumers have lives to live and do not have e-sellers' resources, so giving them 14 days allows them four non-working days to make returns. Furthermore, in computing the return period, the return period should not be determined based on when the e-seller receives the goods back, it should be determined based on when the goods are handed to e-sellers' return agent or at the point of postage. This means that a return posted on the last day of the recommended 14 days should qualify as a valid return even though the goods will not reach the e-seller for a couple of days. E-sellers' return agent should be mandated to give proof of receipt of the goods so that e-consumers can prove their return within the cancellation period. Alternatively, with the development of process automation, e-sellers can give barcodes to e-consumers to make returns, these barcodes can be used for real-time tracking of returns, which would help ascertain whether returns were made within the cancellation period. Process automation barcodes are popularly used by e-sellers in the United Kingdom for real-time return tracking.

An obvious question here is what happens when the goods cannot be returned because they are lost or irreversibly damaged. It is justified to exclude goods that, by nature, completely deteriorate within the recommended cancellation period of fourteen days from the umbrella of this right of cancellation. This is discussed in detail in 6.3.7, where exceptions to the right

of cancellation will be recommended. However, in cases where purchased goods are not naturally expected to be irreversibly damaged within the cancellation period, and facts reveal that the irreversible damages done to the goods are due to the actions, negligence, or omissions of e-consumers, then such e-consumers should lose their cancellation rights for that transaction. For example, the purchase of a mobile phone that falls into a pool and gets damaged during the cancellation period should not be cancellable. As stated in 6.3.4, a fundamental element of unwinding contracts is that both parties should be placed as closest as possible to the position they were in before contracting. This will not be possible if the goods are lost or damaged due to e-consumers' actions or omissions. This will also be the case for goods that are lost by the e-consumer before return, regardless of whether the loss of the goods occurred after the cancellation notice has been given. This is not new, Nigeria and several common law jurisdictions[81] have adopted rules that exclude termination, avoidance, and/or rescission if the rescinding/avoiding/terminating parties who have received goods cannot provide restitution (*restitutio in integrum*).[82]

Due to the length of the cancellation period, it is important to address the issue of diminished value. 6.3.3 recommended that the cancellation period should be 14 days, and this subchapter recommended a similar timeframe for the return period bringing it to a possible 28 days. There may be circumstances where Nigerian e-consumers excessively use the goods during the cancellation and return period. There is also a risk that some e-consumers might intentionally abuse their cancellation rights and excessively use goods only to return and get refunds. While this risk cannot be totally eradicated, it can be controlled by mandating e-consumers to pay for any diminished value of the goods. As mentioned so far, one of the justifications for this right is to allow e-consumers to physically assess the goods before being bound by the contract, therefore it is justifiable that e-consumers are held liable for any use that exceeds that which is needed to verify the goods' value and suitability. When dealing with similar issues, the European legislators maintained that use during the cancellation period should be confined to the extent necessary to establish the nature, and characteristics

[81] England House of Lords in Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd [1996] 4 All ER 769 at 774.
[82] Supreme Cout of Nigeria in Armel's transport Limited v Martins (1970) LPELR-556(SC).

of the goods. In the recital to the CRD 2011, comparison was made with the traditional market and it was stated that e-consumers should only handle and inspect goods in the manner they would be allowed to do if he was purchasing in a physical shop.[83] It is, therefore, not a surprise that the directive allowed e-sellers to charge e-consumers for any diminished value caused by e-consumers handling and use of the goods unless when such handling is necessary to determine the nature, and characteristics of the goods.[84] To prevent consumer abuse, this thesis agrees with the position and logic of the European legislators. It is recommended that the use allowed during the cancellation period should be that which is needed to verify the goods' value and suitability. Nigerian e-consumers should be made responsible for any excessive use that diminishes the value of the goods. Excessiveness here should be tied to any unreasonable use that diminishes the value of the goods.

Determining Diminishing Value

With the preceding paragraph recommending that "excessiveness" should be linked to "diminishing of value" as done by European legislators,[85] The obvious question here is how "diminished value" will be determined and how such value is converted into prices to be deducted from the refund. Determining diminished value is a complicated process which cannot be precisely determined. In fact, there are extreme cases where opening the package of goods instantly diminishes its value. There have been suggestions that diminished value should be determined based on how long goods have been with e-consumers before return,[86] however, this would be counterproductive to one of the objectives of the right of cancellation which is to allow e-consumers sufficient time to access and assess the goods. By tying diminishing value to the amount of time they have had the goods, Nigerian e-consumers, in a bid to reduce the risk of high penalties for diminishing value, would hasten their decision-making on the value, consequently increasing the risk of uninformed and less optimal decisions. As found by various studies, e-consumers focus on negative information when being rushed to make decisions.[87] They also use secondary information and shortcuts, such

[83] CRD 2011, Recital 47.
[84] CRD 2011, s.14(2). The United Kingdom has similar rules in CCR 2013, r.32(9).
[85] CRD 2011, Recital 47.
[86] Luzak (n.22) 96.
[87] Jumin L., Do-Hyung P., and Han I. 'The Effect of Negative Online Consumer Reviews on Product Attitude: An Information Processing View' (2008) 7(3) Electronic Commerce Research and Applications, 341-352.

as online reviews, to make decisions when rushed. These information sources are not as efficient as using the characteristics of the goods itself. Rushed decisions increase the number of cancellations in the market, consequently increasing the price of goods as cancellation costs will ultimately be passed down to e-consumers. With the complexities surrounding this and the varieties of consumer goods, it might be functional for lawmakers to leave the determination of the amount to be deducted for "diminished value" to reasonability which should be resolved on a case-by-case basis.

To protect e-sellers' abuse, the threshold of what qualifies as "diminishing the value of goods" should be high and should be one that only applies to unreasonable use. The objective of Nigerian lawmakers should not be to compensate e-sellers for use, it should be to compensate them for diminished value resulting from unreasonable use of the goods. Without a high threshold, there is a risk that this could scare Nigerian e-consumers to the extent that they might struggle to establish the actual value or functionality of the product because of their fear of being penalized for diminishing value, consequently acting as a barrier to the use of the recommended right of cancellation as a consumer protection mechanism.

In dealing with the issue of diminished value of goods during cancellation period, the Court of Justice of the European Union (CJEU) recognised the risk of having a low threshold on the effectiveness of the right of cancellation. This is why in Pia Messner v Firma Stefan Krüger,[88] it maintained that e-sellers must not demand compensation for use during the cancellation period unless such use is against the principles of good faith and unjust enrichment. This case tied the success of any claim of diminished value to bad faith and unjust enrichment. The standard of establishing bad faith under the Nigerian contract law system is very high,[89] therefore, adopting the standard set by the CJEU in the Pia Messner case to the Nigerian scenario will be beneficial for Nigerian e-consumers. The CJEU also held that the burden of proofing diminished value should be on e-traders. This thesis agrees with this position as placing the burden on e-consumers would increase transaction costs, consequently reducing the efficacy of the right of cancellation for Nigerian e-consumers. The important point is to

[88] [2009] (C-489/07) ECR I-07315 Par. 19, 22–24. (the Pia Messner Case).
[89] Sunshine Oil & Chemical Dev. Co. Ltd v. AMCON & Anor (2017) LPELR-51653(CA).

ensure that the threshold for use that trigger "diminished value" is high, and that the burden of proof should remain with e-sellers.

Finally, as stated above, the cost of returning the goods should rest with e-sellers. Even though several jurisdictions and international regulators with the right of cancellation obligate e-consumers to carry the cost of return. For example, the European Union and the United Kingdom obligate their e-consumers to bear post-cancellation return costs unless in cases where, they were not informed that they will bear such costs before purchase.[90] However, this thesis recommends that for Nigerian e-consumers, all post-cancellation return costs should be on e-sellers. This is because, as mentioned above, the use of the right of cancellation by Nigerian e-consumers will depend on the cost of exercising it. Asking them to pay for returns will lead to costs that might deter them from using the mechanism. To increase adoption and effectiveness, return costs should be on e-sellers.

6.3.6: Information Requirements.

2.2.2 said a lot about consumer literacy in Nigeria. It revealed that there is a low level of consumer literacy in Nigeria, consequently leading to Nigerian e-consumers struggling with self-protection and awareness of the frameworks in place for their protection. Nigerian e-consumers can only exercise their right of cancellation if they know about it, therefore, there is justification to mandate Nigerian e-sellers to inform e-consumers of the existence of cancellation rights and how it should be exercised. This information obligation should also be extended to consumer contracts exempted from the right of cancellation (6.3.7 discussed this). This is because if the right of cancellation recommended in this thesis has as much impact as this mechanism does in the European Union, South Africa and the United Kingdom, there is a likelihood that Nigerian e-consumers, who are notorious for not reading terms, would assume that the mechanism applies to all e-consumer contracts. Therefore, to prevent this, e-sellers' obligations to inform consumers on the right of cancellation should extend to all consumer contracts conducted in the digital market regardless of whether the right of

[90] CRD 2011, Art. 14(1) and CCR 2011, r.35(5)b.

cancellation covers them or not. To further protect Nigerian e-consumers, when the right of cancellation is exempted, e-sellers should be mandated to receive active consent so that e-consumers understand that the right is exempted before contracting. This active consent could be a tickbox at the checkout page, which confirms that cancellation rights do not apply to the contract. A similar approach was taken by the CCR 2013, which provides that digital content should not be supplied during the cancellation period unless the consumer expressly waives his cancellation rights and acknowledges that they will be lost.[91] Passive consent, through the popular browse wrap method of electronic contracting in the Nigerian digital market, should be unacceptable here.

Mandating the provision of information on the right of cancellation is expected to reduce information costs, another issue identified in 3.2 as a key impediment to e-consumer protection in Nigeria. Regardless of how adequate this chapter's recommendations on improving the FCCPA 2018's right of cancellation are, it would not achieve the intended level of protection if e-sellers were not mandated to inform e-consumers about their existence and how they work. Therefore, this chapter recommends that Nigerian e-sellers should be mandated to pre-contractually inform Nigerian e-consumers on its existence, the cancellation period, the return period and how this right can be exercised. This information should be provided as soon as the goods are offered for sale.[92] As highlighted in 3.2, the lawmakers should remember that there is a possibility of e-sellers manipulating information when presenting them to e-consumers,[93] therefore, in providing this information, the FCCPA 2018's information rules (clarity and accessibility of information requirements), discussed in 3.5 must be adhered to. For example, information on cancellation rights should not be muddled up with the other information required in 3.4, it should be provided in context and within the

[91] CCR 2013, r.37.

[92] Chapter 3.4 expanded on why provision of information at the time of display for sale is important to e-consumer protection.

[93] Buda R., and Zhang Y., 'Consumer Product Evaluation: The Interactive Effect of Message Framing, Presentation Order, and Source Credibility' (2000) 9(4) Journal of Product & Brand Management, 229-242. See also Chang C., 'To Donate or Not to Donate? Product Characteristics and Framing Effects of Cause-Related Marketing on Consumer Purchase Behaviour' (2008) 25(12) Psychology & Marketing, 1089-1110.

section on cancellation rights. Nigerian lawmakers should also standardize this information obligation as much as possible to prevent abuse.[94]

The efficacy of any rule heavily depends on penalties for non-compliance and remedies to parties aggrieved because of non-compliance to the said rule. To ensure that e-sellers adhere to the cancellation rights information obligations, penalties should be put in place for non-performance. Breach of this information obligation could occur in three forms – non-provision, late provision, and incorrect or incomplete provision. Unlike the breach of information provision rules under chapter three, it would be excessive to recommend that the breach of cancellation rights' information obligation should lead to avoidance of the contract for breach of statutory duties, therefore the recommendation here would be similar to the approach taken by the European Union and the United Kingdom.[95] Under their legal frameworks, the consequence of e-sellers breaching cancellation rights' information obligations was tied to the computation of the cancellation period. Rather than their statutory cancellation periods, longer timeframes were introduced as remedies for e-consumers when e-sellers fail to inform them of their cancellation rights. Logically, this makes sense because the cancellation period should not start counting until e-consumers become aware of their existence, therefore, if e-sellers fail to notify them of its existence, the cancellation period should be extended. This thesis agrees with this approach and learns from these legal frameworks to make the following recommendations.

In case of non-provision, the cancellation period should expire 12 months after the date that the fourteen-day cancellation period recommended in 6.3.3 should have started, which is the date of receiving the goods.[96] For incomplete and late provision, if the defaulting e-seller provides e-consumers with such information within 12 months, then the fourteen-day cancellation period recommended in 6.3.3 should start from when the information is provided or when the correct information is provided.[97] There is the need to admit the risk that e-sellers might want to charge for the diminishing value compensation, as discussed in

[94] Eidenmüller (n.4) 19
[95] CRD 2011, Art.10 and CCR 2013, r.31.
[96] Similar provisions are contained in CRD 2011 Art. 10(1) and CCR 2013, r. 31(3).
[97] Similar provisions are contained in CRD 2011 Art. 10(2) and CCR 2013, r. 31(2).

6.3.5.2. In this case, Nigerian lawmakers need to expressly provide that when e-sellers fail to provide information on the right of cancellation, e-consumers will not be liable for any diminishing value of the goods at cancellation.

6.3.7: Exceptions.

As stated earlier, the extreme interference of the right of cancellation into foundational contract law necessitates ensuring that frameworks on it are not overly intrusive. It should only be introduced when there are definite gaps that need to be addressed, and those gaps should be as specific as possible (see specific purposes as discussed in 6.3).[98] Some consumer contracts fall outside the scope of these specific purposes and should be exempted from the protection of the recommended right of cancellation. Exempting these contracts ensures that the right of cancellation is not abused by e-consumers, especially in cases where the goods cannot be resold. These exemptions will also be used to protect the functionality of the market. For example, cooked foods would no longer be fresh or of value after fourteen days of purchase, which is the cancellation period. Therefore, it would be detrimental to the functionality of the food market to allow the right of cancellation for food items. It is justifiable to exempt contracts for the purchase of cooked food from the umbrella of the right of cancellation.

Several jurisdictions and international regulators with cancellation rights have maintained in their legal frameworks that there are categories of goods and contracts that are exempted from the right of cancellation.[99] This sub-chapter will take inspiration from these legal frameworks and recommend exceptions to the recommended right of cancellation. Of course, the ordinary Nigerian e-consumer's peculiarities will be considered when making these recommendations.

6.3.7.1: Personalised Goods.

The first of these exemptions should be bespoke goods personalised or customised for an e-consumer. The logic for exempting this category of goods is apparent - they are made for the e-consumer-in-issue, and cannot be resold to someone else, even in cases where they can,

[98] Hellwege (n.9) 511.
[99] CRD 2011 Art. 16 and CCR 2013, r. 28(1).

they cannot be resold for the same value. An example would be customised shirts with the e-consumer's name boldly written on it. Despite recommending this exception, this thesis is worried that there are situations when an e-consumer might want to cancel customised or personalised goods due to the quality of the goods. Using the example above, an e-consumer might want to cancel because the fabric used in making the shirt is of bad quality. Of course, such e-consumers can seek remedy under the implied term of quality discussed in chapter four. However, the chapter found that the access to justice issues surrounding remedies under the implied term makes them ineffective and unpalatable for Nigerian e-consumers. Therefore, there is a need to limit this exemption to only cases where the e-consumer seeks to cancel because he changed his mind. Cancellation for quality of the customised goods or personalised goods not made to the specifications or requirements of the e-consumer should be allowed.

6.3.7.2: Goods that by Nature Deteriorate Quickly.

6.3.5 connected the right of cancellation to the unwinding of contracts and discussed how e-consumers' ability to return goods is a key element of the right to cancellation. It discussed this issue with reference to goods that, by their very nature, deteriorate quickly. It mentioned that these goods cannot be returned, therefore, they should be excluded from the protection of the right of cancellation. The justification for this is clear, these goods lose value quickly and, in most cases, they cannot even survive the cancellation and return period (14 days each), therefore, e-sellers are unable to resell them. While it can be argued that with these goods, e-consumers also suffer from information asymmetry, which is the justification for the right of cancellation, the response to such an argument is that this exemption is needed to protect market functionality.

6.3.7.3: Drugs, Food, and Hygiene-Related Goods Unsealed After Delivery.

Public health is an overriding objective over individual rights, including consumer protection mechanisms[100] such as cancellation rights. Contracts for the purchase of food, drugs, or other hygiene-related food that were delivered sealed but unsealed post-delivery should be

[100] Coglianese C., Finkel A., and Zaring D., *Consumer Protection in an Era of Globalization. Import Safety: Regulatory Governance in the Global Economy* (University of Pennsylvania Press, 2009) 3-21.

excluded from cancellation rights because of the risk they pose to the health of other e-consumers when resold. This does not apply to food items that do not easily deteriorate which remain sealed and well preserved by e-consumers, for example, a bag of crisps. Having set out the proposed reforms, this chapter moves on to examine how efficient these reforms could be. This will be done using Ramsay's cost-benefit analysis model.

6.4: Accessing the Efficiency of the Proposed Right of Cancellation.

The proposed right of cancellation should only be introduced if its benefits outweigh its costs.[101] So far, this thesis has adopted Ramsay's cost-benefit analysis model to analyse recommended reforms.[102] This model measures efficiency in consumer policies. A policy is expected to be efficient if its economic benefits exceed its costs.[103] Assessment under this model is carried out by answering two questions:

1. what is the market failure sought to be reformed, and;
2. are there alternative responses that would provide more benefits to consumer welfare, be cheaper to introduce, enforce, comply with, and offer less unintended consequences?

This chapter proceeds to analyse the proposed right of cancellation to determine their efficiency.

6.4.1: Identifying the Source of the Market Failure.

The first test under this model is to identify the source of the market failure sought to be corrected with the proposed right of cancellation. As discussed earlier, the nature of the digital market, the information asymmetry in the market and the access to justice issues in Nigeria exposes Nigerian e-consumers to risks in the digital market. These include but are not limited to information failure (uninformed purchase decisions) and the absence of effective redress and consumer remedy system. This exposure to risk is further amplified by the situation of the ordinary Nigerian e-consumer as discussed in 2.2. Another failure is the

[101] Eidenmüller (n.4) 5.
[102] See chapter one for more on this.
[103] Ramsay I., 'Rationales for intervention in the Consumer Marketplace' (London, Office of Fair Trading 1984) cited in Ramsay I, *Consumer Law and Policy* (3rd Edn., Hart Publishing 2012) 45.

ineffectiveness of the FCCPA 2018's right of cancellation. 6.2.1 investigated this in detail and revealed that, headlined with tying cancellation rights to pre-delivery activities and including cancellation charges, there are key issues affecting the efficacy of the FCCPA 2018' right of cancellation. It concluded that the FCCPA 2018 right of cancellation does not achieve the objective of the right of cancellation as an e-consumer protection mechanism. Analysis done so far in this chapter also concluded that there is a need to extend the scope of the FCCPA 2018's right of cancellation and make it a mechanism that effectively protects Nigerian e-consumers at a low cost – i.e., in a way that they do not have to recourse to the long-winded and expensive dispute resolution system in the country.

6.4.2: Analysing Alternative Responses.

The next step under this model is to identify alternative responses and consider whether these alternative responses would yield better benefits at a more affordable cost than the proposed right of cancellation. To determine this, the first step is to identify the alternative responses and then assess them through the four cost elements mentioned above. The alternative responses here would be consumer protection mechanisms aimed at correcting uninformed purchase decisions, such as the implied terms rules and the unfair terms rules discussed in chapters four and five, respectively. Another alternative response would be the introduction of an optional right of cancellation as recommended by some academic research works.[104] For ease of analysis, these alternative responses will be referred to as 'identified alternative responses' in this subchapter. Following this identification, this subchapter proceeds to examine the proposed right of cancellation vis-à-vis the identified alternative responses using the cost elements identified above.

6.4.2.1 Benefits to Consumers and Sellers

The first element of the second efficiency test requires lawmakers to consider the benefit of the proposed right of cancellation to consumer welfare and explore whether the identified alternative responses could accrue better benefits to Nigerian e-consumers and achieve better results for the Nigerian digital market.

[104] Luzak (n.22) 107 – 110. See also Eidenmüller (n.4) 9 - 11.

Starting with the benefits of the proposed right of cancellation to Nigerian e-consumers. So far, this chapter has focused on the benefits of the proposed reforms for Nigerian e-consumers. 6.2.1 examined some of the benefits of the right of cancellation to Nigerian e-consumers, particularly as it relates to helping them correct uninformed purchase decisions by allowing them to physically examine the goods. Other benefits include but are not limited to reducing the negative effects of the access to justice issues currently plaguing the Nigerian consumer space and improving the quality of goods offered by e-sellers who would be aware that e-consumers can cancel contracts if the quality is less than optimal. It also connected the dots on how the recommended cancellation rights can help increase the trust and confidence of Nigerian e-consumers in the digital market, the consequence of which will be the development of the Nigerian market. A developed market will create further benefits for Nigerian e-consumers as they will be able to harness the known benefits of the digital market, as identified in 1.1.

Furthermore, 6.2.1 highlighted the loopholes in the FCCPA 2018's right of cancellation and how it fails to protect Nigerian e-consumers. The proposed right of cancellation seeks to correct this. In each stage of recommendation, 6.3 above touched on the benefits of each recommendation to Nigerian e-consumers. For example, removing cancellation charges (as discussed in 6.3.2) increases e-consumers' willingness to use the right of cancellation. Also, the recommended information requirements (as discussed in 6.3.6) are expected to increase the adoption of the mechanism and improve consumer literacy of Nigerian e-consumers, an issue that has been identified in 2.2 as an impediment to e-consumer protection in Nigeria. Another benefit is that the recommended effect of cancellation (as discussed in 6.3.4) provides some level of remedy for Nigerian e-consumers as it terminates the contract and brings them closer to the pre-contractual position (status quo ante contractum) than they would have been with the alternative responses which would require additional dispute resolution costs. Finally, 6.5 below examined how the proposed reform helps reduce some of the effects of the issues identified with other e-consumer protection mechanisms discussed in this thesis. The reduction of these negative effects definitely accrues benefits to Nigerian e-consumers.

Regarding whether an optional right of cancellation as an alternative response would offer better benefits, available research reveals that e-consumers underestimate risks and exhibit excessive optimism.[105] This is evidenced by their established attitude toward product protection insurance, where they would rather risk-purchase than pay a higher fee for products.[106] Empirical research has shown that when consumers are offered product protection insurance with products (which is a similar situation to the optional right of cancellation), only a third of them purchase this protection insurance. The remaining group prefers to purchase goods without it. [107] Optional right of cancellation will most likely suffer the same effect, consequently removing the protection for consumers who need it most.[108] With the country's economic situation and for various behavioural reasons, this thesis is convinced that Nigerian e-consumers would choose to purchase without the optional right of cancellation rather than purchase for a higher fee with the right of cancellation. This will reduce the use of the mechanism by Nigerian e-consumers, consequently reducing its benefits for them. The effectiveness of the right of cancellation in the European Union has been attributed to its mandatory nature,[109] therefore it is clear that the recommended mandatory right of cancellation would harness more benefits for Nigerian e-consumers than an optional one.

On the benefit to e-sellers, cancellation rights improve e-consumers' trust, confidence, and willingness to engage with the digital market. This will develop the market and improve sales for e-sellers. Of course, it can be argued that it will also increase costs for e-sellers, however since cancellation costs are redistributed to all e-consumers, the development of the Nigerian digital market and the increase in sales that comes with it would create more profit for e-sellers as these costs will be absorbed by additional sales.

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[105] Luth H., 'Behavioural Economics in Consumer Policy: The Economic Analysis of Standard Terms in Consumer Contracts Revisited.' (PhD Thesis, Erasmus University Rotterdam, 2010),

[106] Maiyaki A., and Ayuba H., 'Consumers' attitude Toward Islamic Insurance Services (Takaful) Patronage in Kano Metropolis, Nigeria' (2015) 7(2) International Journal of Marketing Studies, 27. See also, Hymans Robertson, 'Over a third (39%) of consumers more likely to buy protection insurance due to pandemic' <https://www.hymans.co.uk/media-centre/press-releases/over-a-third-39-of-consumers-more-likely-to-buy-protection-insurance-due-to-pandemic> accessed 15 February 2024.

[107] Hymans (ibid).

[108] Camerer C. *et al*., (n.72), 1225.

[109] Hellwege (n.9) 586.

Considering whether the identified alternative responses would provide better benefits to e-consumers, discussion in chapters four and five already reveals that there are a few legal uncertainties with the identified responses as they are in most cases tied to the facts of each case, meaning that judicial intervention is frequently needed for interpretation. Furthermore, the absence of self-enforceable remedies also means there is a dependence on the judicial system for remedies. With the access to justice issues in the country, e-consumers are less likely to use the judicial systems for low-value consumer goods. This will lead to inefficient contracts. With this, the benefits of these alternative responses do not measure up to that offered by the proposed right of cancellation, a self-enforceable remedy with no need to involve judicial systems unless in extreme cases, such as when e-sellers deny e-consumers of their cancellation rights.

6.4.2.2: Cost of Formulating the Proposed Right of Cancellation.

Without empirical data, it will be hard to determine the cost of making the amendments needed to extend the scope of the FCCPA 2018's right of cancellation to the recommendations in this chapter. This would require quantitative research on the cost of passing regulations or amending a law in Nigeria. However, the FCCPC delegated legislative powers[110] could help control formulation costs. This is because the FCCPA 2018 already introduced a right of cancellation, the power to extend its scope, as recommended in this thesis, is within the delegated legislative powers of the FCCPC, who has been equipped to introduce regulations that achieve any of the objectives of the FCCPA 2018, one of which is the protection of Nigerian e-consumers.[111]

Comparing this to the alternative responses, the optional right of cancellation would require rules extending its scope. Furthermore, as shown in chapters four and five, the other alternative responses are ineffective as currently construed and would require amendments to achieve efficiency. These amendments will come at a cost, just as extending the scope of the right of cancellation would. In conclusion, these costs even each other out. There will be

[110] FCCPA 2018, s.17(b).
[111] FCCPA 2018, long title.

a need for quantitative research to know which is more expensive. This quantitative exercise is out of the scope of this thesis.

6.4.2.3: Cost of Enforcing the Proposed Right of Cancellation.

Within this context, enforcement costs are in three forms: regulators' cost of enforcing the proposed reform, e-sellers' cost of providing cancellation rights to e-consumers and finally, e-consumers' cost of exercising their cancellation rights and seeking redress when e-sellers deny them of their cancellation rights.

Starting with the regulators' cost. Given the self-enforcing nature of the proposed right of cancellation, the primary responsibility of enforcing it is on e-consumers, therefore, regulators' enforcement costs are expected to be at a reduced rate. However, there are cases where regulators' input will be required. Some of these include but are not limited to tracking compliance with the proposed cancellation information requirements, assisting e-consumers when they are denied of their cancellation rights, etc. Tracking compliances could be achieved at a controlled cost by incentivizing e-consumers to whistle-blow and by randomly testing the market for compliance. Also, regulators' can offset their costs with fines levied against defaulting e-sellers as allowed by the FCCPA 2018.[112] Comparing this to the regulator costs for the identified alternative response, the implied terms and unfair terms rules require judicial intervention, which means that to enforce them, the Competition and Consumer Protection Tribunal (CCPT) and the FCCPC will have to expend cost to adjudicate e-consumers' claims emanating from these alternative responses.

E-sellers' costs are expected to be lower with the right of cancellation than with the implied terms and unfair terms rules. This is because when Nigerian e-consumers bring claims under these alternative responses, Nigerian e-sellers would have to defend them at the expensive Nigerian judicial system. The proposed right of cancellation is expected to be less expensive than having to go to court to defend claims emanating from the alternative responses. Furthermore, there are non-monetary costs that come with a bad reputation in the market, one of which is the unwillingness of e-consumers to purchase in the digital market. The

[112] FCCPA 2018, s150 (b).

consequence of which affects sales and e-sellers' profit margin. Therefore, when the right of cancellation incentivises e-consumers to engage with the market, e-sellers' profits increase, and they can absorb the cost of providing the recommended reform by distributing it across more transactions.

Finally, Nigerian e-consumer costs are significantly reduced here. The proposed right of cancellation is a self-enforceable right that is exercised by sending a notice to the e-sellers and the contract terminates. The proposed right of cancellation at each stage ensured that e-consumers costs are either significantly reduced or eradicated. Therefore, the cost of exercising the recommended reform is expected to remain low and controlled. Comparing this to the alternative responses, there is a significant gap as with them, there is a need to approach the courts, bringing back the access to justice issues discussed so far in this thesis (particularly 2.2).

It is clear that while there are enforcement costs associated with the proposed right of cancellation, they are less than those expected with the alternative responses. In fact, for Nigerian e-consumers, the cost gap is significantly in favour of the proposed right of cancellation. With this, it leaves no doubt that the recommended reform remains the most cost-effective choice.

6.4.2.4: Cost associated with the Unintended Side Effects of the Rule.

The final element considers the unintended side effects cost of the proposed right of cancellation versus the identified alternative responses. Starting with the proposed right of cancellation, an unintended side effect could be that the proposed right of cancellation might disincentivize informed decision-making and reduce consumer learning. In a bid to reduce information cost, which is expensive in Nigeria, Nigerian e-consumers might start making purchase decisions without conducting the level of information exploration required to make these decisions, knowing they can cancel within the proposed cancellation period and correct any error made in their decision.[113] This will increase information asymmetry in the digital

[113] Ben and Posner made this point when criticising the right of cancellation as a consumer protection mechanism. For more see Ben-Shahar and Posner (n.28), 115.

market and lead to an increased higher risk of information failure.[114] When e-consumers start ignoring information, knowing they have the protection of the proposed right of cancellation, this reform could become a tool that increases uninformed purchase decisions, a situation that has severe consequences on the digital market. Furthermore, excessive use of the right of cancellation increases prices in the market because the cost of granting this right is usually redistributed back to e-consumers through the prices of goods offered in the market.

In response to these concerns, Eidenmüller argued that this is not a justification for removing the right of cancellation as a consumer protection mechanism. He argued that while consumer learning is important, asking e-consumers to be stuck with inefficient contracts is much worse. [115] Therefore, the risk of information neglect is not enough justification to deny the introduction of the proposed reforms, as what is worse than uninformed purchase decisions is leaving Nigerian e-consumers stuck with inefficient contracts created as a result of uninformed decisions. As discussed so far in this thesis, inefficient contracts affect the adoption and development of the digital market.

The analysis above reveals that while there are costs associated with the proposed right of cancellation, they are less when compared to the costs of the identified alternative responses. With this, the efficiency of the recommended provision rules can be presumed. The proposed right of cancellation is expected to improve the level of protection offered to Nigerian e-consumers, increase their trust and adoption of the Nigerian digital market, consequently leading to the development of the market.

It is important to conclude that despite the analysis in this chapter, the alternative response of implied terms and unfair terms rules are not to be discarded, they have their place in Nigerian e-consumer protection. It is expected that Nigeria's access to justice issues will be solved sometime in the future, a move that will increase their efficiency. As mentioned in chapter three, consumer protection is not a one-sided shield, it should be a multi-head weapon with different mechanisms that allow e-consumers the flexibility to choose that which protects them the most. Therefore, with the reforms recommended in chapters four

[114] See chapter 3.2 and 3.3.
[115] Eidenmüller (n.4) 5.

and five, the identified responses are expected to have a role to play in e-consumer protection in Nigeria, and they should be allowed to.

6.5: Other Beneficial Effects of the Proposed Right of Cancellation.

Throughout this thesis, references were made to how the right of cancellation could help correct some of the issues identified in each chapter. With a clear understanding of the FCCPA 2018's right of cancellation and the various reforms necessary to increase its efficiency, this subchapter will revisit these references and put into context how the right of cancellation can help reduce issues identified in those chapters. To avoid repetition, this sub-chapter will make a lot of references to the analysis done in previous chapters.

6.5.1: The Proposed Reformed Right of Cancellation and Access to Justice Issues (Chapter Two).

Chapter 2.2.6 discussed the access to justice issues in Nigeria. It highlighted the expensive cost of justice and concluded that it is unreasonable to expect e-consumers to expend such cost for consumer contracts, which are usually for low-value consumer goods, especially because even if they win, the legal fees recoverable are limited to "token of victory," a small amount that does not cover a fraction of the legal fees incurred in pursuing their claim.[116] Furthermore, it was also highlighted that Nigerian courts are clustered with cases, leading to slow resolution by the courts. Available data shows that civil claims take an average of fifteen years (including appeals) before final resolution.[117] The sub-chapter concluded that there is a need for a self-enforceable remedy where e-consumers can exit contracts that are not optimal for them or contracts that are made due to uninformed decisions.

The recommended right of cancellation reduces the aforementioned negative effects of Nigeria's access to justice issues as it is a carefully thought-out mechanism, recommended in a way that there is little or no need to resort to courts before it can be enforced. If well drafted

[116] The costs awarded by Nigerian courts are usually "a token of victory" which is sometimes not up to 10% of the entire litigation cost incurred by the parties. - GTDT, 'Complex Commercial Litigation, Nigeria' (2019) <https://gettingthedealthrough.com/area/102/jurisdiction/18/complex-commercial-litigation-nigeria/> accessed 26 January 2024.

[117] Mondaq.com 'Effect Of Appeals On Course Of Trials – Litigation, Mediation & Arbitration – Nigeria' <https://www.mondaq.com/nigeria/trials-appeals-compensation/309008/effect-of-appeals-on-course-of-trials> accessed 4 February 2024.

with precision and the recommended level of detail, it is expected that it would go a long way in reducing the effect of the discussed access to justice issues because it would allow e-consumers to be able to cancel the contract, no matter what the issue is, get their refund without having to approach the court and expend access to justice costs. Admittedly, there will be cases where e-sellers will fail to recognise this right, and e-consumers will have to approach the court for enforcement. However, the number of e-sellers that would reject the exercise of this right will be less compared to those who will uphold it, therefore, the majority of e-consumers would not have to go to court to benefit from this redress mechanism. By freeing up the cluster in the courts with the right of cancellation, only complicated and extreme cases will go to court and with decluttered court dockets, the extreme cases will move faster, and the Nigerian e-consumers' access to justice situation will be improved.

6.5.2: The Proposed Right of Cancellation and Uninformed Purchase Decisions (Chapter Three)

Chapter three focused on information and its importance to e-consumer protection. It was highlighted that due to certain social factors peculiar to the Nigerian environment and the nature of the digital market, Nigerian e-consumers struggle with making informed decisions, which affects the market's development. Chapter three also highlighted information costs and concluded by recommending mandatory information provision rules in the Nigerian digital market. Despite its' recommendations, the chapter admitted that no matter how effective and adequate information is provided to Nigerian e-consumers, there are e-consumers that would still make uninformed decisions, therefore, there is a need for alternative mechanisms, one of which is the right of cancellation. 3.4.2 further revealed that the FCCPA 2018 does not have statutory remedies for e-consumers for the breach of information rules in the Act. It echoed the need for a self-enforceable statutory remedy, such as the right of cancellation. Therefore, within this context, the recommended right of cancellation serves two purposes: correct uninformed purchase decisions and act as a self-enforceable redress for the breach of the information provision rules. With the proposed right of cancellation, the consequences of uninformed purchase decisions on Nigerian e-consumers become less dire than it is at the moment because Nigerian e-consumers will be able to cancel uninformed contracts with little to no consequences. Furthermore, it is expected that with

this ability to correct uninformed purchase decisions, Nigerian e-consumers will be more willing to engage with the digital market, consequently improving the growth of the market.

Finally, when addressing 'ordinary consumer' concept under the FCCPA 2018, 3.5.2.1 admitted that a few Nigerian e-consumers would fall below the ordinary consumer benchmark. It argued that these consumers need to be protected either through illiterate protection laws and/or the right of cancellation. With the recommended right of cancellation, e-consumers who are unprotected under the information regulations because they fall under the ordinary consumer threshold will be able to correct their uninformed decisions by cancelling purchase contracts within the cancellation period. Admittedly, there is a risk that they might not know that this mechanism exists, however, the public sensitization and consumer education recommendations made in chapter 2.2 would assist in closing these gaps and educating them, in their local languages, of their cancellation rights.

6.5.3: The Proposed Right of Cancellation and Implied Terms of Description, Purpose, and Quality (Chapter Four).

Chapter four looked at the effectiveness of the implied term of description, purpose, and quality for e-consumer protection in the country. It pointed out that in determining what qualifies as description, the FCCPA 2018 only focused on material deviations and neglected minor deviations. It lamented the exposure of Nigerian e-consumers to risk regarding minor deviation given that they do not physically assess the goods prior to purchase. Similar issues were discussed within the context of the implied term of quality, where the dedication of the Nigerian courts to the de minimis principle was shown as a roadblock to the protection of Nigerian e-consumers against minor defects in quality. The chapter concluded by calling for alternative mechanisms like the right of cancellation. The proposed right of cancellation would help reduce the risk of Nigerian e-consumers being stuck with products that minorly deviate from what they expect to receive from e-sellers, as they can now cancel the contract without any penalties.

Finally, the chapter identified several gaps with the FCCPA 2018 statutory remedies by the FCCPA 2018 for the breach of the implied terms. With the access to justice issues in the

country, the efficacy of these remedies was heavily doubted. However, Nigerian e-consumers can cancel the contract and get their money back with the right of cancellation. Admittedly, the recommended right of cancellation does not provide compensatory damages, however, it provides a quick, easy-to-use, and cost-effective remedy for Nigerian e-consumers who suffer a breach of the implied terms. E-consumers who suffer significant damages can approach the court for compensatory damages.

6.5.3: The Proposed Right of Cancellation and Unfair Terms Rules (Chapter Five).

Chapter five revealed that one of the reasons why Nigerian e-consumers are exposed to unfair terms is because they do not read terms. While it made recommendations for improving the efficacy of the incorporation test, it concluded that the impact of the incorporation test will be limited if e-consumers continue to not read terms. It dialled back to issues identified in chapter three and admitted that there is a need for alternative remedies like the right of cancellation which offers a blanket right to cancel inefficient contracts to e-consumers. The recommended right of cancellation will allow e-consumers to cancel such contracts with little repercussions. As done with chapters two, three, four and five, the chapter also concluded that the lack of self-enforceable remedies means that Nigerian e-consumers must resort to common law remedies for redress. These remedies require judicial intervention consequently bringing back the access to justice issues earlier discussed. It concluded that the right of cancellation, as proposed in this chapter, could help here. The right of cancellation helps e-consumers cancel contracts containing unfair terms discovered during the cancellation period. If the unfair term was discovered after the proposed cancellation period, then e-consumers would have to resort to common law remedies or statutory remedies as recommended by chapter five.

6.6: Conclusion.

This chapter considered another consumer protection mechanism, the right of cancellation, to determine the extent to which it can improve e-consumer protection in Nigeria. To set a benchmark, this chapter starts by informing this thesis on the conventional right of cancellation existing in other jurisdictions and the European Union. After which it examined

the FCCPA 2018 right of cancellation to determine the level of protection it provides to Nigerian e-consumers. Gaps affecting effectiveness and efficacy were identified.

With the awareness of these gaps, this chapter recommended ways in which the FCCPA 2018 provisions on this mechanism can be improved for efficiency. In making these recommendations, this thesis paid attention to arguments on the excessive intrusion of this mechanism on contract law principles. Therefore, reforms were only recommended to the extent needed to achieve adequate protection for Nigerian e-consumers. Recommended reforms also focused on maintaining the self-enforceable advantage of the right of cancellation, therefore, they were specific and detailed to remove any uncertainties that might necessitate the need to approach the courts for interpretation or clarification. The proposed right of cancellation was analysed for efficiency using Ramsay's cost-benefit analysis tool. This analysis led to a positive result supporting the need for extension through the right of cancellation. Finally, to further support the need for these recommendations, this chapter looked at some of the issues identified in the preceding chapters. It considered how the recommended right of cancellation can help correct or reduce the negative effects of these issues.

CHAPTER SEVEN.

GENERAL CONCLUSION.

7.1: Conclusion.

Through existing research, this thesis found that, compared to other developing countries, the Nigerian digital market is developing at a low rate. It found that the continuous decline in transactions in the digital market, is not because Nigerian consumers are not purchasing, because available data shows an increase in consumer transactions, it is just that they are not purchasing from the digital market. One of the reasons for this is the inadequacies of e-consumer protection frameworks in the country. Shortly before the start of this research in 2019, Nigeria introduced its first locally enacted comprehensive consumer protection framework, the Federal Competition and Consumer Protection Act of 2018 (FCCPA 2018). This Act became the foundation of this research.

The objectives of this thesis are - to examine the extent to which the provisions of the FCCPA 2018 protect e-consumers in Nigeria (objective one), to identify issues affecting the adoption of e-commerce by Nigerian e-consumers (objective two), to examine the effect of the principles of caveat emptor, freedom of contract and party autonomy on the development of e-consumer protection laws in Nigeria (objective three), and finally to make recommendations for any gaps discovered by objectives one – three using lessons learnt from the United

Kingdom, South Africa, the European Union and other international treaties and model laws (objective four). Doing this brings originality and fills several research gaps, the primary of which is that this is the first comprehensive research on the efficacy of the FCCPA 2018 for e-consumer protection. It is also the first research to factor the peculiarities of the ordinary Nigerian e-consumer into an assessment of e-consumer protection frameworks in the country.

7.1.1: The Peculiarities of the Nigerian E-consumers.

To achieve the stated objectives, there was a need to exposit on certain principles fundamental to the Nigerian contract law system, which is what the earlier part of chapter two did. This examination reveals that these principles place excessive responsibilities on Nigerian e-consumers to self-protect and make informed decisions. As shown in chapter three and the later part of chapter two, Nigerian e-consumers are not adequately equipped to self-protect and make informed decisions. To ensure that this thesis examination on the effectiveness of the FCCPA 2018 was adequately done, there was a need to expose the thesis to the peculiarities of the Nigerian e-consumer that might contribute to their exposure to risks in the digital market. This examination gave insights into why the situation of Nigerian e-consumers' differs from their counterparts in other jurisdictions. For example, the infrastructural issues discussed in chapter two led to the conclusion that there is high information cost in Nigeria and therefore, Nigerian e-consumers have a different attitude to information use, the result of which impedes their ability to make informed decisions. The access to justice issues in the country also showed that some of the protective mechanisms introduced by the FCCPA 2018 would be ineffective because it is unreasonable to expect the average Nigerian e-consumer, who lives below the global poverty line ($105.96 annually), to pursue redress in court to enforce their protection under these mechanisms. This conclusion led this chapter to consider self-enforceable remedies such as the right of cancellation examined in chapter six.

7.1.2: Information Failure: Nigerian E-Consumers' Struggle to Make Informed Purchase Decisions

With the realisation that several Nigerian e-consumer issues discussed in this thesis are in one way or the other linked to information failure, it makes sense that this thesis started its assessment on the effectiveness of the FCCPA 2018 with the Act's information regulations.

Information is a key part of protecting e-consumers given they have to contract before the opportunity to physically access and assess the purchased goods. They have to make a decision on whether the goods fit their interests solely based on assessing information. As pointed out earlier, the Nigerian legal system leaves information exploration responsibilities to e-consumers by asking them to "be-aware" and gather the information needed for their decision-making, activities that this thesis found to be difficult for Nigerian e-consumers given the high information cost, their low level of digital literacy, infrastructural issues, etc. Following the contract law system, the FCCPA 2018 also failed to provide any information provision rules. The only information regulation in the Act are information rules, which regulate how information is provided to consumers. However, even these information rules are found to be inadequate by this thesis because of its limitation to only situations where information provision is mandated by law. This thesis concluded that these information rules are useless given that there are barely any mandatory information provision requirements in Nigeria.

This thesis's findings that the FCCPA 2018 information regulations are ineffective achieves the objectives set in objective one - three. Firstly, it shows that limiting the FCCPA 2018's information rules to only those pieces of information that e-sellers are legally required to be provided renders the rules ineffective because, in reality, without mandatory information provision obligations, these rules do not offer any protection. Secondly, it reveals that this inadequacy of the information regulations increases information and transaction costs for Nigerian e-consumers, and reduces their confidence in the market, consequently affecting consumers' adoption of the Nigerian digital market. Finally, it traced the lack of adequate information regulations in Nigeria to the principles of freedom of contract, party autonomy, and caveat emptor, firmly connecting them to the reason for the low level of consumer confidence and trust in the Nigerian digital market, the effect of which affects its development.

In line with objective four, this thesis sought out ways to improve the effectiveness of these information regulations. For guidance, it turned to the United Kingdom and South Africa, jurisdictions with similar contract law principles. With this, it recommended the introduction of mandatory pre-contractual information provision rules, which would mandate Nigerian e-

sellers to provide selected pieces of information to e-consumers when offering goods for sale. Of course, it might be hard to definitively identify those pieces of information that should be provided, therefore this thesis relied heavily on how the United Kingdom and South Africa have tackled this issue and recommended information items similar to those existing in these jurisdictions. The conclusion is that the aim is not to protect every individual e-consumer; it is to protect the ordinary Nigerian e-consumers. This thesis believes the recommended information items reasonably covers information that most e-consumers need for decision-making.

Even though this thesis does not doubt that Nigerian e-consumer protection should be founded on information regulations, it expressed concerns because of certain limitations of information regulations as a consumer protection mechanism. Referencing the issues identified in chapter two and existing research on consumers' attitude to information, this thesis is concerned that several Nigerian e-consumers might not use information no matter how adequately they are provided to them. It was considered whether information regulations should be dispensed with, but this consideration was discarded given the important role information regulations play in the effectiveness of other e-consumer protection mechanisms. Consumer protection mechanisms would only be effective if e-consumers know of them, and information regulations is one of the potent regulatory instruments to achieve this. Furthermore, uninformed purchase decisions lead to inefficient contracts, it is better to prevent uninformed purchase decisions that seek to correct them, especially for a developing market like the Nigerian digital market. This is because e-consumers are not very forgiving, they are unlikely to repurchase from a market that previously resulted in an inefficient contract and exposed them to bad market outcomes. Information regulation seeks to prevent uninformed decisions, and this should be at the forefront of e-consumer protection with efforts to correct uninformed decisions secondary and complementary. This thesis concluded that a joint protection approach that combines information regulations and other complementary corrective mechanisms would provide a better protective climate for Nigerian e-consumers. E-consumers who are able to effectively use information would do so, and those who are unable to would seek the protection of these corrective mechanisms.

7.1.3: Improving the FCCPA 2018's Implied Terms of Description, Purpose and Quality.

The first complementary mechanism discussed in this thesis is the implied terms of description, purpose and quality. Since the colonial period, these implied terms are corrective mechanisms used to correct uninformed purchase decisions in Nigeria. Being a Received English Law from the Sale of Goods Act 1893 (SGA 1893), including it in the FCCPA 2018, impliedly repealed the SGA 1893's provisions on these implied terms. This is a welcome reform given the various issues associated with the SGA 1893's implied terms over the past half-century. In line with objectives one and two, this thesis examined the effectiveness of the FCCPA 2018's provisions of each of these implied terms for e-consumer protection.

In its findings, it was revealed that the FCCPA 2018 failed to address the issues surrounding what qualifies as description. This failure means description remained tied to information identifying the purchased goods, a position that brings back the uncertainties existing prior to the enactment of the Act. This thesis challenged the effectiveness of tying description to information identifying purchased goods, given the marketing and advertisement practices in the digital market. In line with objective four, this thesis recommends an amendment that includes main characteristics information, which has a broader reach when determining description. Similar position was taken by the United Kingdom with the Consumer Rights Act 2015. With this, the effectiveness of the implied term of description as an e-consumer protection mechanism could be improved. Regarding the standard of correspondence needed to satisfy this implied term, this thesis found that the provisions of the FCCPA 2018 is effective here as it removes the risk of consumer abuse and facilitates a more effective market. Despite the conclusion on the implied term of description, this thesis expressed doubts on the extent to which the implied term of description actually protects Nigerian e-consumers. By its very nature, description, whether limited to identifying information or extended to main characteristics as recommended, remains tied to the information provided by e-sellers. An observation that brings this thesis back in circle to the recommendations made in chapter three. Without mandatory pre-contractual information provision rules, the effectiveness of this implied term would be less than it could have been.

As currently constructed, examination on the FCCPA 2018's implied term of purpose led to a definite conclusion that it is ineffective for e-consumer protection. Precontractual

communication of purpose triggers the protection of this implied term, an activity that hardly occurs in the Nigerian digital market, as communication with e-sellers are reserved for post-contract queries and related matters. While the position of the Nigerian court on pre-contractual communication might help, the uncertainties associated with it makes it unattractive for use, therefore the probability of e-consumers adopting this complicated process remains in doubt. In line with its fourth objective, this thesis recommended that Nigerian e-sellers should be mandated to provide adequate communication channels as that is the only way this implied term can be useful for e-consumer protection. This recommendation also helps e-sellers as it relieves them from the extreme application of the current Nigerian law on pre-contractual communications and saves them the cost of monitoring several communication channels.

This thesis found the FCCPA 2018's implied term of quality to be the most effective implied term under the FCCPA 2018. This can be traced to several reasons – the first of which is that it replaces the problematic merchantability standard that existed before the enactment of the Act with a much clearer and definite standard, the good standard of quality. By introducing parameters to which the good standard of quality will be determined corrects several uncertainties that plagued the merchantability standard of quality. However, despite this lauded improved standard, there are key issues reducing the effectiveness of the implied term of quality that required attention, and that is one of the gaps addressed by chapter four when it took guidance from the United Kingdom's CRA 2015 and made recommendations on how to improve the effectiveness of the implied terms. The statutory remedies for the breach of these implied terms were found to be ineffective given their lack of structure, uncertainties on how they are to be exercised, excessive discretionary powers of e-sellers, etc. To correct these gaps, recommendations were also made with guidance from the CRA 2015's short-and-long-term rights to reject. Until the process of exercising these statutory remedies is made easier and less costly for Nigerian e-consumers, they will not achieve the intended efficiency.

7.1.4: How Effective is the FCCPA 2018's Unfair Terms Regulations?

Unfair terms regulations is another corrective mechanism that helps correct the limitations of information regulation as an e-consumer protection tool. Just like the implied terms rules, including unfair terms regulations in the FCCPA 2018 repealed the unfair terms regulations

received through the received English law. This thesis found that the FCCPA 2018 corrected some of the gaps that existed in the pre-FCCPA unfair terms regulations as it extended unfair terms control from only exclusion and exemption clauses to all consumer terms. It also introduced a fairness test to replace the fundamental breach rule test that has been controversial for half a century. This thesis admitted that the FCCPA 2018's unfair terms regulations significantly improved the pre-FCCPA 2018 unfair term control. However, there are several gaps and uncertainties that require attention. A noticeable one is the Act's attempt to regulate fairness in prices. This thesis argued that there is no legal scale or criterion that can provide guidance on how to determine fairness in price. Theoretically, price is 'consideration', and the adequacy and sufficiency of consideration should be left to market forces. It is unreasonable to say the price paid for goods is unfair because one party got a better bargain than the other. In line with objective four, an amendment to remove this subjection of price to the fairness tests was recommended.

Regarding the effectiveness of the fairness tests, this thesis found the provisions of the Act on these tests adequate enough to achieve effectiveness. Its only concerns are that these tests might be too complicated for Nigerian e-consumers to understand and that the Act gave the courts excessive discretionary powers when determining compliance with these fairness tests. Similarities with the unfair terms regulations of the United Kingdom's CRA 2015 and the European Union's Unfair Contract terms Directive 1993 (UCTD 1993) allowed this thesis to make recommendations on how they should be interpreted. In fact, chapter five heavily recommended the use of guidance documents as key interpretation instruments to increase effectiveness. Clear guidance on interpretation will increase legal certainty, help consumers adequately assess the potential success of their claims before assessing the courts and educate them on their legal protections under the unfair terms regulations.

The effect of an unfair term is to expunge it from the contract and make it non-binding retrospectively. Assessing the effectiveness of this approach raised a few questions on what happens when the term being made non-binding is an essential term of the purchase contract that its non-bindingness affects the validity of the contract. While this might not be an issue for several contracts, there are situations where it might not be beneficial for e-consumers' interests to rescind their purchase contracts. Recommendations were made learning from

how the CRA 2015 and UCTD 1993's approach to this situation. These frameworks either allowed the parties renegotiate a fair term or have the court unilaterally substitute the unfair essential term with supplementary legal positions and/or principles. Despite these recommendations, this thesis concludes that the courts must let e-consumers choose their preferred option. Consumers who want to rescind the contract should be able to, and so should those who wish to renegotiate and those who want to replace the unfair term with a supplementary position of the law.

7.1.5: Improving the Effectiveness of a Self-Enforceable Remedy – The FCCPA 2018's Right of Cancellation.

Throughout this thesis discussion on information regulations and the corrective mechanisms, a recurring issue that always questions their effectiveness is Nigeria's access to justice issues. Despite the recommended reforms, this thesis remains concerned that Nigerian e-consumers would be willing to expend the efforts and costs needed to protect and enforce their rights. This issue led this research to consider a self-enforceable consumer redress mechanism - the right of cancellation. For this mechanism to be "self-enforceable" there needs to be clear rules on every facet of how it operates, how it is exercised and its scope. Lawmakers must think of every possible issue that might affect effectiveness or exercise and address it. Also, legal development on this mechanism must remain active so that as new issues arise, amendments and reforms are being introduced to address them. Chapter six found that the FCCPA 2018's right of cancellation does not offer these advantages. It is limited in scope, only protects until goods are delivered, penalises consumers for cancelling, and contains several uncertainties about its operation. In line with objective four, this thesis learnt from the European Union, the United Kingdom and South Africa's rights of cancellation and made recommendations on how the effectiveness of the FCCPA 2018's right of cancellation can be improved so that the advantages of cancellation rights as a consumer protection mechanism can be achieved.

Finally, this thesis was able to show that the recommended right of cancellation will improve the effectiveness of all the FCCPA e-consumer protection frameworks discussed in this thesis. Furthermore, it will significantly reduce the effects of some of the Nigerian e-consumers issues identified earlier in the thesis, particularly the access to justice and uninformed decisions issues. It is expected that just like the effect of this mechanism in other countries

and the European Economic Area, most Nigerian e-sellers will refrain from bad market practices, knowing fully well that if the goods and contract are not optimal and efficient for e-consumers, they would simply cancel the contract through their cancellation rights.

At the beginning of this thesis, four objectives were set. This thesis achieves these objectives by thoroughly assessing the effectiveness of the FCCPA 2018 for e-consumer protection through the lens of the selected mechanisms and making recommendations to fill identified gaps with the aim of facilitating the development of the market through legal certainty and adequate e-consumer protection. It is important that concerted efforts are undertaken promptly to fortify consumer confidence and foster a robust digital marketplace conducive to sustainable growth and innovation. The recommendations in this thesis are a good place to start.

BIBLIOGRAPHY.

Books and Contributions to Edited Books.

- Agomo K, 'Exclusion Clauses in Contracts and the Implications for Consumer Protection in the Nigerian Law of Contract' in OO Obilade (eds), *A Blueprint for Nigerian Law* (Faculty of Law University of Lagos, 1995).
- Atiyah, Patrick Selim, John Norman Adams, and Hector L. MacQueen. *Sale of Goods.* (Pearson Education, 2005).
- Bert-Jaap Koops, 'Should ICT Regulation be Technology-Neutral' in Bert-Jaap Koops, Miriam Lips, Corien Prins & Maurice Schellekens (eds), *Starting Points for ICT Regulation: Deconstructing Prevalent Policy One-Liners* (M.C. Asser Press., 2006).
- Bridge M.G. (eds), *Benjamin's Sale of Goods* (9th Edn, Sweet & Maxwell 2016).
- Busch C., The Future of Pre-Contractual Information Duties: From Behavioural Insights to Big Data in Twigg-Flesner Christian, (eds.) *Research handbook on EU Consumer and Contract law*. (Edward Elgar Publishing, 2016).
- Calcabrini A., *et al.,* '"*Free Returns"-Reducing Returns in the Online Fashion Industry*' (Project, London School of Economics and Political Science 2020).
- Canavan, Rick, et al., *Atiyah and Adams' Sale of Goods*, (Pearson Education Limited, 2016).
- Cartwright, John. *Misrepresentation, Mistake and Non-Disclosure*. (Sweet & Maxwell, 2012). 4-01.

- Clarke M.A., *et al.* Commercial Law: Text, Cases, and Materials. (2017 Oxford University Press.) 10.
- Coglianese C., Finkel A., and Zaring D., *Consumer Protection in an Era of Globalization. Import Safety: Regulatory Governance in the Global Economy* (University of Pennsylvania Press, 2009).
- Collins, H., *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law* (Volume 15, Kluwer Law International BV, 2008).
- Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Towards a new Framework for Electronic Communications Infrastructure and Associated Services* (The 1999 Communications Review COM 1999).
- Collin H., *Dictionary of Law* (5th Edn. A&C Black 2007).
- Collins H., 'Disclosure of Information and Welfarism', in Brownsword R., Howells G., and Wilhelmsson T., (eds), *Welfarism in Contract Law* (Dartmouth Publishing Co Ltd, 1994).
- David Kastle-Lamparter, "Pre-Contractual Information Duties" in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018).
- Dubitzky W, Kötter T, Schmidt O, and Berthold M, 'Towards Creative Information Exploration based on Koestler's Concept of Bisociation' in M Berthold (eds) *Bisociative Knowledge Discovery. Lecture Notes in Computer Science*, (v.7250 Springer, Berlin - Heidelberg: 2012).
- Einer Jeffrey and Evan J., *Contemporary Regulatory Policy* (Lynne Rienner Publishers, New York 2000) 4.
- Esgate Anthony and Groome David, *An Introduction to Applied Cognitive Psychology*. (Psychology Press, 2005).
- European Commission, *Consumer Protection in the Internal Market* (Special Eurobarometer) (September 2006)
- European Commission, *Consumer Protection in the Internal Market* (Special Eurobarometer) (October 2008).
- European Commission, *Green Paper on the Review of the Consumer Acquis* (COM 774 final, 2006).
- Ewan McKendrick (eds), *Goode on Commercial Law* (6th Edn, Penguin Books 2021)

- Fairgrieve Duncan, and Richard Goldberg, *'Implied Terms as to Correspondence with Description, Satisfactory Quality, And Fitness For Purpose', Product Liability* (Oxford Academic 2020).
- Fleischer H, *Contract-Related Information Obligations in Community Private Law (*8 Zeup 2000).
- Fletcher A., *et al.,* 'Consumer Protection for Online Markets and Large Digital Platforms' (2023) 40 Yale Journal on Regulation, 875.
- Francioni Francesco, *Access to Justice as a Human Right* (OUP Oxford, 2007).
- Gutterman Alan, *Older Persons' Access to Justice* (Oakland CA: Older Persons' Rights Project, 2022).
- Grynbaum L, 'Pre-contractual Information Duties: The Foreseeable Failure of Full Harmonisation' in Schulte-Nölke, Hans and Lubos Tichy (eds) *Perspectives for European Consumer Law. Towards a Directive on Consumer Rights and Beyond* (Köln: Verlag, 2010).
- Hastie Reid, and Robyn M. Dawes, *Rational Choice in an Uncertain World: The Psychology of Judgment and Decision Making* (Sage Publications, 2009).
- Hellwege P, 'Right of Withdrawal in Distance and Off-Premises Contracts' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018).
- Howells G. & Weatherill S., *Consumer Protection Law* (2nd edn, Ashgate 2005).
- Huyssteen V., Louis F., and Catherine J., *Maxwell. Contract Law in South Africa* (Kluwer Law International BV, 2021).
- Igweike K, *Commercial Law: Sale of Goods*, (Jos: Fab Education Books; 1992).
- Igweike K. I., *Consumer Protection in a Depressed Economy* (12th Inaugural Lecture, University of Jos, Jos, Nigeria, 2001).
- Ivan L Preston, *Great American Blow-up: Puffery in Advertising and Selling* (2nd edn, University of Wisconsin Press 1996).
- Jesus Ignacio Fernandez Domingo, `Some Notes about Contracting and Electronic Commerce' in Francisco Javier Orduna Moreno (*eds*), *Contracting and Electronic Commerce* (Spanish) (Tirant lo Blanch 2003).

- Kakalik J, Dunworth T., Hill A., McCaffrey D., and Oshiro M. '*Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management under the CJRA'* (DTIC Document 1996).
- Kanyip B., *Consumer Protection in Nigeria: Law, Theory and Policy*. (Rekon Books Ltd., Abuja, 2005).
- Lee Robert G., 'The Contract Formation under the Caveat Emptor Rule: Assessing its Utility' in *Essays in Memory of Professor Jill Poole* (Informa Law from Routledge 2018).
- Loos M., 'Rights of Withdrawal' in Howells G., and Schulze R., (eds) *Modernising and Harmonising Consumer Contract Law* (Sellier de Gruyter, 2009).
- Lukas, 'Contracts concluded outside of business premises' in Jud B. and Christiane Wendehorst C., (eds.) *Neuordnung des Verbraucherprivatrechts in Europa?: Zum Vorschlag einer Richtlinie über Rechte der Verbraucher? (Reorganization of Consumer Private Law in Europe?: On the Proposal for a Directive on Consumer Rights*) (MANZ Verlag Vienna, 2009).
- Luth H. and Cseres K., 'The DCFR and Consumer Protection', in Chirico et al., (eds) *Economic Analysis of the DCFR* (Otto Schmidt Verlagskontor 2010).
- Kastle-Lamparter D., 'Pre-Contractual Information Duties' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018) 402.
- Kingston R., *The Social Implications of E-commerce: A Review of Policy and Research* (York: Joseph Rowntree Foundation, 2001).
- Kötz Hein, *European Contract Law* (2nd Edn, Oxford University Press, 2017).
- Macdonald E., Atkins R., and Krebs J., 'Unfair terms in Consumer Contracts' in Macdonald E., Atkins R., and Atkins R. (eds) *Koffman & Macdonald's Law of Contract* (Oxford University Press, USA, 2014).
- MacQueen Hector, Christian Twigg-Flesner, and Rick Canavan, *Atiyah and Adams' Sale of Goods* (Pearson 2016).
- Magnus U., 'Legal Consequences in the Acquis Communautaire' in *Information Obligations and Contract Conclusion in the Acquis Communautaire* (Ibidem Tübingen 2003).
- Michael Bridge, *Benjamin's Sale of Goods* (12 Edn Sweet & Maxwell Ltd 2023).

- Micklitz H., 'Unfair Commercial Practices and Misleading Advertising', in N. Reich, H.-W. Micklitz, P. Rott & K. Tonner (eds), *European Consumer Law* (Cambridge: Intersentia 2014).
- Monye F, *Law of Consumer Protection* (Spectrum Books Ltd 2003) 122-153.
- Nebbia Paolisa, *Unfair Contract Terms in European law: A Study in Comparative and EC* Law (Bloomsbury Publishing, 2007).
- Nicholas B 'The Pre-contractual Obligation to Disclose Information, Part 2: English Report', in Harris D and Tallon D (eds), *Contract Law Today: Anglo-French Comparisons* (OUP 1989), 170.
- Nils Jansen 'Unfair Contract Terms' in Jansen N & Zimmermann R (eds) *Commentaries on European Contract Laws* (OUP 2018).
- Norman Silber, 'From the Jungle to The Matrix: The Future of Consumer Protection in Light of its Past' in Jane K Winn (eds), *Consumer Protection in the Age of the Information Economy* (Markets and the Law, Ashgate 2006).
- Nuruddeen M., Yusof Y., & Abdullah N. A., 'Electronic Commerce Transaction In Nigeria: A Critical Legal Literature Review' in A. Abdul Rahim, A. A. Rahman, Abdul Wahab N., Yaacob A., Munirah Mohamad & Husna Mohd. Arshad A (eds.), *Public Law Remedies in Government Procurement: Perspective from Malaysia* (European Proceedings of Social and Behavioural Sciences, Vol.52: 2018).
- Okey Achike, *Commercial Law in Nigeria* (Fourth Dimension Publishers 1985).
- Panagariya A, and Cnuced E., *E-commerce, WTO and Developing Countries*. (United Nations 2000).
- Percy Larry, *Strategic Integrated Marketing Communications* (Routledge 2008).
- Ramsay I., *Consumer Law and Policy* (3rd Edn, Hart Publishing 2012).
- Ramsay I, *Rationales for Intervention in the Consumer Marketplace* (Office of Fair Trading, 1984).
- Ramsay I., 'Rationales for intervention in the Consumer Marketplace' (London, Office of Fair Trading 1984) cited in Ramsay I, *Consumer Law and Policy* (3rd Edn, Hart Publishing 2012).
- Rayport Jeffrey F., and Bernard Jaworski. *Introduction to E-commerce* (McGraw-Hill Irwin MarketspaceU, 2004).

- Rickett Charles, and Thomas Telfer, *International Perspectives on Consumers' Access to Justice (eds).* (Cambridge University Press, 2003).
- Robert Bradgate, '*Commercial Law*' (3rd Edn, Oxford University Press 2003).
- Rott P., 'Information Obligations and Withdrawal Rights', in Twigg-Flesner (eds), *The Cambridge Companion to European Union Private Law. Cambridge Companions to Law*, (Cambridge University Press, 2010).
- Sagay E, *Nigerian Law of Contract* (Spectrum Law Publishing, Ibadan, 1993).
- Terryn E., 'The Right of Withdrawal, the Acquis Principles, the Draft Common Frame of Reference and the Proposal for a Consumer Rights Directive' in Schulze R., *Common frame of reference and existing EC contract law*. (No. 1. Walter de Gruyter 2009).
- Twigg-Flesner C., & Schulze R., 'Protecting Rational Choice: Information and the Right of Withdrawal' in Howells G., *et al*. (eds) *Handbook of Research on International Consumer Law*, (Cheltenham: Edward Elgar, 2010).
- Uvieghara E, *Sale of Goods (and hire purchase) law in* Nigeria (Malthouse Press Ltd; 1996).
- Waddams Stephen M, *Dimensions of Private Law: Categories and Concepts in Anglo-American Legal Reasoning* (Cambridge University Press, 2003).
- Wendehorst C, '§ 312a' in Säcker Franz Jürgen, Rixecker, Roland, Oetker, Hartmut, Limperg, Bettina (eds) *Munich Commentary on the Civil Code: BGB, Volume 3: Obligation Law General Part II (§§ 311-432)* (8th Edn, C.H. Beck 2019).
- Wenette J., 'The Electronic Communications and Transactions Act: Consumer Protection and Internet Contracts.' (2004) 16(4) SA Mercantile Law Journal, p.556-567.
- Wilhelmsson T., 'Private Law Remedies against the Breach of Information Requirements of EC Law', in Schulze, Ebers, and Grigoleit, *Informationspflichten*, 245–65.
- Willett Chris, *Fairness in Consumer Contracts: The Case of Unfair Terms* (Routledge, 2016).
- Winn Jane K., *Consumer Protection in the Age of the 'information Economy* (Routledge, 2016).
- Wrbka Stefan, *European Consumer Access to Justice Revisited* (Cambridge University Press, 2014).

- Zheng S., *Electronic Consumer Contracts in the Conflict of Laws* (1st Edn, Hart Publishing Ltd 2009).
-

Journal Articles.

- Acemoglu Daron and Andrew Scott. 'Consumer Confidence and Rational Expectations: Are Agents' Beliefs Consistent with the Theory?' (1994) 104 (422) The Economic Journal. 1-19.
- Adebayo A, and Alaba K., 'Electronic Commerce in Nigeria: The Exigency of Combatting Cyber Frauds and Insecurity' [2016] 47 Journal of Policy and Globalization 159.
- Adetoro David Oluwadare, 'Highlights of Nigeria's Federal Competition and Consumer Protection Act 2018: An Overview' (2021) 42(6) Business Law Review, 1.
- Adeyeye M., 'E-Commerce, Business Methods and Evaluation of Payment Methods in Nigeria.' (2008) 11 (1) Electronic Journal Information Systems Evaluation, 1-6.
- Adnan Amirah Madihah, Zamzuri Zakaria, and Norhoneydayatie Abdul Manap., 'Analysis of Caveat Emptor Application in Online Purchases,' [2021] 24 Journal of Legal, Ethical and Regulatory Issues, 1-6, p.2.
- Adomi E., Okiy R., & Ruteyan J., 'A Survey of Cybercafés in Delta State, Nigeria.' (2003) 21 (5) The Electronic Library, 487-495.
- Afolayan, M., and Aladesanmi J., 'Legal Analysis of the Challenges of Unfair Terms and Consumer Protection in Hire Purchase Transactions in Nigeria' [2022) 13(1] Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 70-77.
- Agbale E. A., 'Regulatory Schemes and Consumer Protection: A Critique' (1993) 7 Journal of Business Law Society p. 24.
- Agege Charles, Products and the Consumer: Reform of Nigerian Law on Exemption Clauses.' (1989) 32 Howard Law Journal, 803.
- Agustiawan Hendri, Khoirul Umam, and Mohammad Maleka, 'The Importance of Consumer Protection Law Revision in the Development of E-Commerce in the Digital Transformation Era in Indonesia' (2022) 1(2) Proceedings of Islamic Economics, Business, and Philanthropy, 305-317.

- Aidonojie Paul Atagamen, Odojor Oyenmwosa Anne, and Odetokun Olukayode Oladele, 'An Empirical Study of the Relevance and Legal Challenges of an E-Contract of Agreement in Nigeria' [2020] 12 Cogito: Multidisciplinary Research Journal, 170.
- Ajayi A, Aderounmu A., and Soriyan A., 'Improving the Response Time of Online Buyers in Nigeria: The Way Forward.' (2008) 13 (1) Journal of Internet Banking and Commerce, 1-10.
- Aidonojie Paul Atagamen, Odojor Oyenmwosa Anne, and Odetokun Olukayode Oladele, 'An Empirical Study of the Relevance and Legal Challenges of an E-contract Agreement in Nigeria' (2020) 12(3) Cogito, 2066.
- Ajai W 'Recent Trends in Fundamental Breach and Exclusion Clauses in the Consumer/Commercial Transaction' (1992-93) 16 Journal of Private and Property Law 37.
- Akanibo Samuel A., and Tamunoemi Adokiye Abbiyesuku, 'E-Commerce as a Catalyst for Sustainable Growth and Economic Development in the Contemporary Nigeria' (2021) 9(3) International Journal of Business & Law Research, 85-93
- Akerlof G, 'The Market for "Lemons: Quality Uncertainty and the Market Mechanism,' [1970] 84(3) The Quarterly Journal of Economics, Oxford University Press, 488-500.
- Akintola K.G.., *et al.* 'Appraising Nigeria Readiness for E-commerce Towards: Achieving Vision 20: 2020' (2011) 9 (2) International Journal of Recent Research and Applied Studies, p.1.
- Akintoye Ishola R., et al. 'Business Sustainability Through E-commerce: A Myth or Reality in Nigeria.' (2022) 23(2) Business: Theory and Practice, 408-416. P.409.
- Alimi-Memedi Shpresa. 'Consumer Protection and Freedom of Contract in The Directive 93/13/ECC On Unfair Terms in Consumer Contracts.' (2018) 6(9) JUSTICIA International Journal of Legal Sciences, 95-113
- Ariely Dan., 'Controlling the Information Flow: Effects on Consumers' Decision Making and Preferences.' (2000) 27(2) Journal of Consumer Research, 233-248.
- Augustus, Nnawulezi Uche, 'Consumer Rights in a Democratic System and the Emerging Market in Nigeria.' [2018] 6 International Journal on Consumer Law and Practice, 29., p.38.

- Averitt N., and Lande R., 'Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law', (1997) 65 Antitrust Law Journal, p.716.
- Ayo Charles, *et al.,* 'A Framework for E-commerce Implementation: Nigeria a Case Study.' (2008) 13(2) Journal of Internet Banking and Commerce, 1-12.
- Ayo Charles, et al., 'Business-to-Consumer E-commerce in Nigeria: Prospects and Challenges' (2011) 5 (13) African Journal of Business Management, 5109.
- Ayo Charles, 'The Prospects of E-Commerce Implementation in Nigeria' (2006) 11(3) Journal of Internet Banking and Commerce, 1-8.
- Bainbridge, `Mandatory Disclosure: A Behavioural Analysis' (2000) University of Cincinnati Law Review. 102.
- Bakos Yannis, Florencia Marotta-Wurgler, and David R. Trossen. 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts.' (2014) 43(1) The Journal of Legal Studies. 1-35.
- Bamodu Gbenga., 'Information Communication Technology and E-commerce: Challenges and Opportunities for the Nigeria Legal System and the Judiciary' (2004) 2 The Journal of Information, Law, and Technology, 1-24, 18.
- Becher Shmuel I. 'Behavioural Science and Consumer Standard Form Contracts.' (2007) 68 Louisiana Law Review, 117
- Ben-Shahar O., and Posner E., 'The Right to Withdraw in Contract Law' (2011) The Journal of Legal Studies, 115–148, p.115.
- Bergh R and Visscher L., 'The Preventive Function of Collective Actions for Damages in Consumer Law (2008) 1 Erasmus Law Review at 5.
- Biswas Dipayan, "The Effects of Option Framing on Consumer Choices: Making Decisions in Rational Versus Experiential Processing Modes' (2009) 8 (5) Journal of Consumer Behaviour: An International Research Review, 284-299.
- Bobonazarov Alisher, 'The Arbitrability of Consumer Disputes: How to Avoid Power Imbalance?' (2003) 1(3) International Conference on Management, Economics & Social Science. 12.
- Borges G and Irlenbusch B, 'Fairness Crowded Out by Law', (2007) 163 Journal of Institutional and Theoretical Economics 84–101, 85.

- Branch Khalkhal, and Iran Khalkhal. ‘Critical Analysis of Kaldor-Hicks efficiency Criterion, with Respect to Moral Values, Social Policy Making and Incoherence.’ (2012) 6(7) Advances in Environmental Biology, 2032-2038.
- Brandner H. and Ulmer P., ‘The Community Directive on Unfair Terms in Consumer Contracts: Some Critical Remarks on the Proposals Submitted by the EC Commission’ [1991] 28 Canadian Modern Language Review, 656.
- Brian A Blum, 'The Protean Concept of Materiality in Contract Law' (2020) Michigan State Law Review 643.
- Buckingham David, ‘Defining Digital Literacy’ (2016) Nordic Journal of Digital Literacy, 21-34.
- Buda R., and Zhang Y., ‘Consumer Product Evaluation: the Interactive Effect of Message Framing, Presentation Order, and Source Credibility’ (2000) 9(4) Journal of Product & Brand Management, 229-242.
- Camerer C. *et al*., ‘Regulation for Conservatives: Behavioural Economics and the Case for “Assymetric Paternalism” (2003) 151 University of Pennsylvania Law Review, 1211.
- Chang C., ‘To Donate or Not to Donate? Product Characteristics and Framing Effects of Cause-Related Marketing on Consumer Purchase Behaviour’ (2008) 25(12) Psychology & Marketing, 1089-1110.
- Chemzche Omar and Anas T, ‘E-Commerce in Malaysia: Development, Implementation and Challenges,’ (2014) 3(1) Irmbrjournal.com, 291–298.
- Chibike Amucheazi and Joshua Olewu, 'Consumer Dissatisfaction in E-commerce Transactions: Protecting the Nigerian Consumers' (2023) 44(3) Business Law Review, 117-123.
- Cohen George M., ‘Interpretation and Implied Terms in Contract Law’ in Encyclopaedia of Law and Economics, (2011) 6 Contract Law and Economics 6, 5.
- Corbitt, Brian J., Theerasak Thanasankit, and Han Yi., ‘Trust and E-Commerce: A Study of Consumer Perceptions’ (2003) 2(3) Electronic Commerce Research and Applications, 203-215.
- Christozov Dimitar, Stefanka Chukova, and Plamen Mateev., ‘A Measure of Risk Caused by Information Asymmetry in E-Commerce.’ (2006) 3(1) Issues in Informing Science and Information Technology., 147-157.

- Davis M., Fisher F., Hetherington F., and Pollock J., ‘Transcript: Why We Need a Counsel in Civil Matters Where Basic Human Needs Are at Stake’ (2014) 64 Syracuse Law Review. 369.
- Delorme Charles D., David Kamerschen, and Lisa Ford Voeks. ‘Consumer Confidence and Rational expectations in the United States compared with the United Kingdom." (2001) 33(7) Applied Economics. 863-869.
- Dickie John, ‘Consumer Confidence and the EC Directive on Distance Contracts’ (1998) 21(2) Journal of Consumer Policy, 217-229.
- Ebejer James and Michael Morden, ‘Paternalism in the Marketplace: Should a Salesman be his Buyer's keeper?’ (1988) 7(5) Journal of Business Ethics, 337-339.
- Edet Ani O., Uchendu C., and Atseye E., ‘Bridging the Digital Divide in Nigeria: A Study of Internet Use in Calabar Metropolis, Nigeria.’ (2007) 28 (6-7) Library Management. 355-365.
- Egwali A., ‘Customers Perception of Security Indicators in Online Banking Sites in Nigeria’ (2009) 14 (1) Journal of Internet Banking and Commerce, 1-15.
- Eidenmüller H., ‘Cancellation Rights’, in Eidenmüller H., Faust F., Grigoleit H., Jansen N., Wagner G., and Zimmermann R., Towards a Revision of the Consumer Acquis, (2011) 48 Common Market Law Review, 109–65, 161.
- Eidenmüller H., ‘The Homo Economicus and the Law of Obligations: Challenges Posed by Behavioural Law and Economics’ (2005) 60 Juristenzeitung, 222.
- Eidenmüller H., ‘Why Withdrawal Rights?’ [2011] 1 European Review of Contract Law 2.
- Eshet Y., ‘Digital Literacy: A Conceptual Framework for Survival Skills in the Digital Era’ (2004) 13(1) Journal of Educational Multimedia and Hypermedia, 93-106.
- Etomilade-Oduola, Ifeoluwa, ‘Cashless Policy and Consumer Protection: A Critical Appraisal of the Nigerian Cyber Laws’ (2020) 100 Journal of Law, Policy and Globalization, p.12.
- Etudaiye M., ‘The Doctrine of Natural Justice as an Arm of the Rule of Law in Nigeria’ [2007] 34(1) Journal of Malaysian and Comparative Law. 195- 21.
- Eze Uzoamaka Gladys, and Ozioma Mary Ogbonna., ‘An Evaluation of the Protection of Nigerian Consumers under the Federal Competition and Consumer Protection Commission Act.’ (2021) 3 International Review of Law and Jurisprudence, 13.

- Faloye Olaleye. 'The Adoption of E-commerce in Small Businesses: An Empirical Evidence from Retail Sector in Nigeria.' (2014) 8(2) Journal of Business and Retail Management Research, 14.
- Faure G and Luth H "Behavioural Economics in Unfair Contract Terms" (2011) 34 Journal of Consumer Policy 337–358.
- Filani A. and Aina S., 'Commerce and Enforcement of Consumer Rights in Nigeria: Issues, Prospects and Challenges' [2020] 3(1) Journal of Law and Judicial System, 1-15.
- Fischhoff B., Slovic P., and Lichtenstein S., 'Knowing with Certainty: The Appropriateness of Extreme Confidence' [1977] 3 Journal of Experimental Psychology: Human Perception and Performance, 552.
- Folorunso, O. *et al*. 'Factors Affecting the Adoption of E-commerce: A Study in Nigeria' (2006) 6 (10) Journal of Applied Sciences, 3.
- Gefen D., 'E-Commerce: The Role of Familiarity and Trust' (2000) 28(6) International Journal of Management Science, 725–737.
- Ghapa Norhasliza and Nor Aida Ab Kadir, 'Information Regulation: A Measure of Consumer Protection' (2021) Pertanika Journal of Social Sciences & Humanities 29.
- Gholami Roya *et al.*, 'Factors affecting E-payment Adoption in Nigeria.' (2010) 8(4) Journal of Electronic Commerce in Organizations, 51-67.
- Gibson L., 'Access to Justice and Consumer Redress within a Single Market' (1992) 15 Journal of Consumer Policy. 407-415.
- Giliker Paula. 'The Consumer Rights Act 2015 – a Bastion of European Consumer Rights?' (2017) 37(1) Legal Studies, 78-102.
- Grigoleit H., 'The Information Obligations of the Acquis, in Eidenmüller H., Faust F., Grigoleit H., Jansen N., Wagner G., and Zimmermann R., Towards a Revision of the Consumer Acquis, (2011) 48 Common Market Law Review, 261
- Grundmann S., 'Information, Party Autonomy and Economic Agents in European Contract Law' (2002) 39(2) Common Market Law Review, 280.
- Grundmann S., 'The EU Consumer Rights Directive, (2013) 68 JuristenZeitung 53–65.
- Hadfield G., 'The Cost of Law: Promoting Access to Justice through the (un) Corporate Practice of Law' (2014) 38 International Review of Law and Economics. 43-63.

- Hadfield G., Howse R., and Trebilcock M., `Information-Based Principles for Rethinking Consumer Protection Policy' (1998) 21 Journal of Consumer Policy, p. 135-143.
- Haeran Jae and Devon Delvecchio 'Decision Making by Low-Literacy Consumers in the Presence of Point-of-Purchase Information' (2004) 38(2) Journal of Consumer Affairs. 342-354.
- Harland D., 'The United Nations Guidelines for Consumer Protection (1987) 10 Journal of Consumer Policy, 245–266.
- Hahn Robert and John Hird. 'The Costs and Benefits of Regulation: Review and Synthesis' (1991) 8 Yale Journal on Regulation 233.
- Heiderhoff B., 'Information as a Means of Consumer protection in European Consumer Contract Law—A History of Pyrrhic Victories' (2010) 2 Silesian Journal of Legal Studies, 26–44.
- Helberger N., Loos M. and Guibault L., 'Digital Content Contracts for Consumers.' (2013) Journal of Consumer Policy, 37–57, 49.
- Hilton Matthew., "Consumer Protection in the United Kingdom." (2006) 47(1) Jahrbuch für Wirtschaftsgeschichte, 45-60.
- Hoffman Donna, Thomas P. Novak, and Marcos Peralta. 'Building Consumer Trust Online' (1999) 42(4) Communications of the ACM, 80-85.
- Honigsberg C, Jackson RJ Jr and Squire R, 'How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment' (2017) 60 The Journal of Law & Economics 673.
- Howells Geraint, 'The Potential and Limits of Consumer Empowerment by Information' [2005] 32(3) Journal of Law and Society. 349-370.
- Igbintade W., 'About 100m Nigerians Don't Have Access to Justice' (2013) Adelodun. 1.
- Ilobinso, Ihuoma 'A Critical Analysis of the Online Consumer's Right to Information in Nigeria' (2022) 4 International Review of Law and Jurisprudence, 89.
- Ilobinso, Ihuoma K. 'Paving the Path to an Enhanced Consumer Protection for the Nigerian Online Market: Theories and Concepts' (2017) 8(2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 81-91, p.89.

- Ilobinso Ihuoma, 'Protecting Consumers in the Online Market from Unfair Contract Terms: The Nigerian Perspective' (2018) 14(1) Nigerian Journal of Contemporary Law, 1.
- Ilona Dumanska, Lesya Hrytsyna, Olena Kharun, and Olha Matviiets, 'E-Commerce and M-Commerce as Global Trends of International Trade Caused by the Covid-19 Pandemic' (2021) WSEAS Transactions on Environment and Development. 1.
- Incardona R. and Poncibò C., 'The Average Consumer, the Unfair Commercial Practices Directive, and the Cognitive Revolution' (2007) 30 Journal of Consumer Policy 21, 29.
- Inderst Roman and Marco Ottaviani. 'Sales Talk, Cancellation Terms and the Role of Consumer Protection' (2013) 80(3) Review of Economic Studies 1002.
- Inegbedion H., Obadiaru D., and Bello V., 'Factors that Influence Consumers' Attitudes Toward Internet Buying in Nigeria.' (2016) 15(4) Journal of Internet Commerce, 353-375.
- Irvine Heather, and Luke Myburgh, 'Nigeria's New Federal Competition and Consumer Protection Commission Flexes its Muscles' (2020) 20(8) Without Prejudice, 22-22.
- Iwok, Amanim and Bassey Kooffreh, 'An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria' (2014) 29 Journal of Law, Policy, and Globalization, 1.
- Jackson Howell E., and Paul Rothstein. 'The Analysis of Benefits in Consumer Protection Regulations' (2019) (9) Harvard Business Law Review, 197.
- Jacobs Wenette, 'The Electronic Communications and Transactions Act: Consumer Protection and Internet Contracts.' (2004) 16(4) SA Mercantile Law Journal, p.556-567.
- James W Kuhn et al., 'W. Chamberlain: A Retrospective Analysis of His Scholarly Work and Influence' (1983) International Journal of Education and Research 143.
- Jarvenpaa S., Tractinsky N., and Vitale M., 'Consumer Trust in an Internet Store' (2000) 1 Information Technology and Management, 45-71.
- Jessah J., 'E-Commerce in Nigeria: Liability for Loss or Damage to Goods Supplied by a Seller Pursuant to an Electronic Contract' [2020] 1(3) International Journal of Comparative Law and Legal Philosophy, 111.
- Jones M., and Boyer B. 'Improving the Quality of Justice in the Marketplace: The Need for Better Consumer Remedies' (1971) 40 The George Washington Law Review. 357.

- Jumin L., Do-Hyung P., and Han I. 'The Effect of Negative Online Consumer Reviews on Product Attitude: An Information Processing View' (2008) 7(3) Electronic Commerce Research and Applications, 341-352.
- Kanyip B., 'Reflections on Consumer Protection Law in Nigeria' in Ayua, I. A., (eds) 1995 Law Justice and the Nigerian Society, 300- 301.
- Kanyip B., 'Service Liability under Nigerian Consumer Law' [2005] 1(1) Consumer Journal, 90-95.
- Kwilinski, Aleksy, et al. 'E-Commerce: Concept and Legal Regulation in Modern Economic Conditions' (2019) 1 Journal of Legal, Ethical and Regulatory Issues, 1.
- L'Heureux N. 'Effective Consumer Access to Justice: Class Actions' (1992) 15 Journal of Consumer Policy 445-462.
- Law Commission and Scottish Law Commission, Consumer *Remedies for Faulty Goods* (Law Com No 317 and Scottish Law Com No. 216, November 2009) para 1.17-1.18.
- Lawal Ahmed and Richard Chukwu Ogbu. 'E-Commerce, Problems and Prospect in Nigeria." (2015) 1(3) International Journal of Scientific Engineering and Applied Science, 230-236.
- Lawal Mohammed, and Khadija Abdulkadir., 'An Overview of E-Commerce Implementation in Developed and Developing Country; A Case Study of United States and Nigeria' (2012) 2(5) International Journal of Modern Engineering Research, 3068-3080. p.3076.
- Lefkowitz Louis, 'Consumer Protection Meeting the Challenge' [1968] 4 Portia Law Journal, 67.
- LeViness Charles T., 'Caveat Emptor Versus Caveat Venditor' [1942] 7 Maryland Law Review 177.
- Liao Z. 'The Recent Amendment to China's Consumer Law: An Imperfect Improvement and Proposal for Future Changes' (2014) 5 Beijing Law Review. 163-171.
- Lim J and Kim J, 'Impact of Consumers' Confidence in Judgements about Missing Information on Product Evaluations' (1992) 25(3) Journal of Business Research 215-229.
- Loos M., 'The Case for a Uniform and Efficient Right of Withdrawal from Consumer Contracts in European Contract Law', (2007) 15 ZEuP 5–36.

- Lowry, Paul Benjamin, et al. "Online payment gateways used to facilitate e-commerce transactions and improve risk management." Communications of the Association for Information Systems (CAIS) 17.6 (2006): 1-48.
- Luzak J., 'To Withdraw or Not to Withdraw? Evaluation of the Mandatory Right of Withdrawal in Consumer Distance Selling Contracts Taking into Account Its Behavioural Effects on Consumers.' [2014] 37 Journal of Consumer Policy, 91.
- Luzak Joasia., 'Online Disclosure Rules of the Consumer Rights Directive: Protecting Passive or Active Consumers.' (2015) 4 Journal of European Consumer and Market Law, 79.
- MacNeil Iain 'Uncertainty in Commercial Law.' (2009) 13(1) Edinburgh Law Review 68-99.
- Maiyaki A., and Ayuba H., 'Consumers' attitude Toward Islamic Insurance Services (Takaful) Patronage in Kano Metropolis, Nigeria' (2015) 7(2) International Journal of Marketing Studies, 27.
- Marshall H., 'The Future of 'Received' English Law in the Countries of the Commonwealth' (1982) 15(1) The Comparative and International Law Journal of Southern Africa, 81–91.
- Mavlanova Tamilla, Raquel Benbunan-Fich, and Marios Koufaris., 'Signaling Theory and Information Asymmetry in Online Commerce.' (2012) 49(5) Information and Management, 240-247.
- Micklitz and N Reich, 'The Court and the Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)', (2014) 51 Common Market LR 793.
- Mmadu Rufus Akpofurere, 'Application of Implied Terms in the Sale of Goods Act to Consumer Transactions in Nigeria: Between Consumers Protection and Safeguarding the Sanctity of Contracts.' [2014] 2(2) Journal of Business Law. 63-106. p.63.
- Molla A. and Licker P., 'E-Commerce Adoption in Developing Countries: A Model and Instrument' (2005) 42 Information & Management, p.877-899.
- Monye F., 'A Ray of Hope for Consumers in Nigeria as Exemption Clauses Slide towards Extinction' (2022) 10 International Journal on Consumer Law and Practice, 51 – 55.
- Monye F., 'An Overview of Consumer Law in Nigeria and Relationship with Laws of Other Countries and Organisations' (2018) 41 Journal of Consumer Policy 383.

- Monye F., 'The Need to Restrict the Scope of Application of Exemption Clauses' (1991) 2 Justice 19.
- Moores, Trevor, 'Do Consumers Understand the Role of Privacy Seals in E-Commerce?' (2005) 48(3) Communications of the ACM, 86-91.
- Movsesian L. 'Severability in Statutes and Contracts' (1995) 30 Georgia Law Review, 41.
- Moxley Lauren., 'Zooming Past the Monopoly: A Consumer Rights Approach to Reforming the Lawyer's Monopoly and Improving Access to Justice.' (2015) 9 Harvard Law & Policy Review 553.
- Natalie Ross Adkins and Julie L. Ozanne 'The Low Literate Consumer', (2005) 32(1) Journal of Consumer Research' 93–105, 104.
- Ndubisi E, Anyanwu A and Nwankwo, C 'Protecting the Nigerian Consumer: An Expository Examination of the Role of Consumer Protection Council' [2016] 4 (3) International Journal in Management & Social Science, p.529 - 542.
- Nkamnebe Anayo *et al*., 'Consumer Protection in Market Transactions in Nigeria' (2009) 5(4) Innovative Marketing, 89-94, p.89.
- Nuruddeen *et al*., 'Legal Framework for E-commerce Transactions and Consumer Protection: A Comparative Study' (2016) 2(2) Bayero Journal of Private and Commercial Law, 41-56.
- Nwocha, M. E. 'Law of Sale of Goods in Nigeria: Interrogating Key Elements of the Sale of Goods Act Relating to the Rights of Parties to a Sale of Goods Contract. [2018] Beijing Law Review, 9, 201-210.
- O'Sullivan T. 'Online Shopping Terms and Conditions in Practice: Validity of Incorporation and Unfairness' [2014] 20 Canterbury Law Review. p.6-8.
- Obih Uchenna, and Lloyd S. Baiyegunhi. 'Willingness to Pay and Preference for Imported Rice Brands in Nigeria: Do Price–Quality Differentials Explain Consumers' Inertia?.' (2017) 20(1) South African Journal of Economic and Management Sciences, 1-11.
- Ogunyombo Oludare, Olusola Oyero, and Kunle Azeez. 'Influence of Social Media Advertisements on Purchase Decisions of Undergraduates in Three Nigerian Universities.' (2017) 9(2) Journal of Communication and Media Research. 244-255.

- OJ Olujobi, AA Adeniji, OA Oyewunmi, AE Oyewunmi, 'Commercial Dispute Resolution: Has Arbitration Transformed Nigeria's Legal Landscape?' (2018) 9(1) Journal of Advanced Research in Law and Economics, p.204-209.
- Okechuku Chike and Vincent Onyemah. 'Nigerian Consumer Attitudes Toward Foreign and Domestic Products.' (1999) 30 Journal of International Business Studies; 611-622.
- Okolie Ugo Chuks, and Awulika Happiness Ojomo. 'E-Commerce in Nigeria: Benefits and Challenges' (2020) 28(2) Humanities & Social Sciences Latvia, 1.
- Okoli P. and Umeche I. 'Between Use and Abuse: An Examination of the Efficacy of Interim and Interlocutory Injunctions in Nigeria.' (2011) 37 (2) Commonwealth Law Bulletin. 241-254.
- Oloveze AO., Ogbonna C., Ahaiwe E. and Ugwu, P., 'From Offline Shopping to Online Shopping in Nigeria: Evidence from African Emerging Economy' (2022) 1 Indian Institute of Management Ranchi, Journal of Management Studies, 55.
- Olusoji James George *et al.,* 'Risk and Trust in Online Shopping: Experience from Nigeria' (2015) 11 International Journal of African and Asian Studies 75.
- Onyema E. 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC' (2013) 2 Apogee Journal of Business, Property & Constitutional Law. 96-130.
- Petrauskas Feliksas and Eglė Kybartienė. 'Online Dispute Resolution in Consumer Disputes' (2011) 18(3) Jurisprudencija, 921-941.
- Piwuna Morgan Goson, 'Examination of Consumer Protection under the Nigerian Communication Commission Act, 2003' (2016) 3(4) Journal of Education & Social Policy, 15.
- Poliakh Serhiy, 'The Consumer Protection as a Driver of Innovative Development: Case Study for Consumers of Financial Services' (2018) 2 Marketing and Management of Innovations, p.378-387.
- Popa, Florin. "On Pareto efficiency and equitable allocations of resources." Romanian Economic Journal 10.23 (2007): 73-79.
- Punj Girish., 'Consumer Decision Making on the Web: A Theoretical Analysis and Research Guidelines.' (2012) 29(10) Psychology and Marketing, 791-803.

- Rares Steven, ‘Striking the Modern Balance between Freedom of Contract and Consumer Rights.’ [2014] 28(3) Commercial Law Quarterly: The Journal of the Commercial Law Association of Australia, 7-16.
- Raymond Anjanette H., and J. Benjamin Lambert. ‘Technology, E-Commerce and the Emerging Harmonization: The Growing Body of International Instruments Facilitating E-commerce and the Continuing Need to Encourage Wide Adoption.’ (2014) 17 International Trade and Business Law Review, 419.
- Razak, Farihana Abdul, and Zuhairah Ariff Abd Ghadas, ‘Standard Form Contracts in Online Business’ (2023) 13(2) International Journal of Academic Research in Business and Social Sciences 1002.
- Reed Chris. ‘Online and Offline Equivalence: Aspiration and achievement.’ (2010) 18(3) International Journal of Law and Information Technology, 248-273, p.248.
- Reed Chris ‘Taking Sides on Technology Neutrality’, (2007) 4(3) Script-ed 263.
- Reisch Luciaa and Zhao Min, ‘Behavioural Economics, Consumer Behaviour and Consumer Policy: State of the Art’ (2017) 1 Behavioural Public Policy 190; 195.
- Rezabakhsh B., *et al.* ‘Consumer Power: A Comparison of the Old Economy and the Internet Economy’ (2006) 29(1) Journal of Consumer Policy, 3-36.
- Rose Ohiama Ugbe, Brian Anyatang, Kooffreh B, and Anne Agi, 'Consumer Redress Channels under Nigerian Laws: A Comparative Analysis' (2020) 104 Journal of Law, Policy, and Globalization. 18.
- Saarijarvi H., Sutinen U., and Harris L., 'Uncovering Consumers’ Returning Behaviour: A Study of Fashion Ecommerce' (2017) 27(3) The International Review of Retail, Distribution and Consumer Research, 284.
- Schebesta, Hanna, and Kai Purnhagen. "Island or Ocean: Empirical evidence on the Average Consumer Concept in the UCPD." (2020) 28(2) European Review of Private Law, 293.
- Schmitz J. ‘Access to Consumer Remedies in the Squeaky Wheel System’ (2013) 39 Pepperdine Law Review. 279-366.
- Schwartz A. and Wilde L. L., ‘Imperfect Information, Monopolistic Competition, and Public Policy’ [1982] 72(2) American Economic Review, pp. 18-23.

- Schwartz A. and Wilde L. L., ‘Imperfect Information in Markets for Contract Terms: The Examples of Warranties and Security Interests’ [1983] 69(8) Virginia Law Review, pp. 1387-1486; 1420.
- Schwartz A. and Wilde L. L., ‘Intervening In Markets on the Basis of Imperfect Information: A Legal and Economic Analysis’ [1979] 127(3) University of Pennsylvania Law Review, pp. 630-682; 647.
- Shopova T., ‘Digital Literacy of Students and Its Improvement at the University’ (2014) 7(2) Journal on Efficiency and Responsibility in Education and Science, 26-32.
- Simbarashe Tavuyanago, ‘The Interface between Competition Law and Consumer Protection Law: An Analysis of the Institutional Framework in the Nigerian Federal Competition and Consumer Protection Act of 2019’ (2020) 27(3) South African Journal of International Affairs, 391-411.
- Soghoian Christopher, ‘Caveat Venditor: Technologically Protected Subsidized Goods and the Customers who Hack Them’ [2007] 6 North-Western Journal of Technology and Intellectual Property, 46.
- Stănescu-Sas and Andreea-Mădălina., ‘Paternalism in Consumer Law’ (2021) Challenges of the Knowledge Society, 277-289.
- Suk-Joo Lee, Cheolhwi Ahn, Kelly Minjung Song and Hyunchul Ahn, ‘Trust and Distrust in E-Commerce,’ (2018) 10(4) Sustainability, Multidisciplinary Digital Publishing Institute, Open Access Journal 1-19.
- Sunstein C. and Thaler R., 'Libertarian Paternalism is not an Oxymoron' (2003) 70 University of Chicago Law Review, 1159.
- Svantesson Dan and Roger Clarke, ‘A Best Practice Model for E-Consumer Protection’ (2010) 26(1) Computer Law and Security Review, 31-37.
- Taher Ghada. ‘E-Commerce: Advantages and Limitations’ (2021) 11(1) International Journal of Academic Research in Accounting Finance and Management Sciences, 154.
- Tamar Lakerbaia, 'European Standard for Informed Consumer' (2015) TSU Journal of Law 118.
- Tan YH. and Thoen W., ‘Toward a Generic Model of Trust for Electronic Commerce’ (2000) 5(2) International Journal of Electronic Commerce, 61–74.

- Toyin Oguntunde and Damilola O., ‘Abandonment Factors Affecting E-commerce Transactions in Nigeria.’ (2012) 46(23) International Journal of Computer Applications, 41-47.
- Tyagi Rajeev K, ‘Technological Advances, Transaction Costs, and Consumer Welfare.’ (2004) 23(3) Marketing Science, 335-344.
- Udoudo Nsongurua Unyime, and Jacob Otu Enyia, ‘The Interface between Competition Law and Consumer Protection Law: An Analysis of the Institutional Design for the Enforcement of the Nigerian Federal Competition and Consumer Protection Act, 2018’ (2022) 21 Academy of Strategic Management Journal, 1-10.
- Ugwu, Chinelo Constance and Ann Ogbo, ‘The Implications of Legal and Policy Frameworks for E-commerce in Nigeria.’ (2021) 45(2) Bullion, 73-80.
- Ukwueze Festus, ‘An Appraisal of Consumer Redress Under the Law of Contract in Nigeria’ (2010). 7(1) UNIZIK Law Journal, p.4-8.
- Ukwueze F, ‘Legal Remedies for Consumers of Telecommunications Services in Nigeria.’ (2012) The Nigerian Juridical Review 10.
- Ukwueze F, ‘Unfair Terms in Consumer Contracts in Nigeria: The Need for Stricter Statutory Control’ (2007) 3 Consumer Journal, 41-63.
- Usman Dahiru Jafaru, Nurli Yaacob and Aspalella A Rahman ‘An Inquiry on the Affordability of Legal Services and the Appropriateness of the Regular Courts for Consumer Redress in Nigeria’ (2016) 7 Beijing Law Review, 83-94, 84.
- Usman Dahiru Jafaru, Nurli Yaacob and Aspalella A Rahman ‘Lack of Consumer Awareness: A Major Challenge for Electricity Consumer Protection in Nigeria.’ (2015) 11(24) Asian Social Science 240-251, 242.
- Usman Muhammad Umar, and Pawan Kumar., ‘Factors Influencing Consumer Intention to Shop Online in Nigeria: A Conceptual Study, (2021) 25(4) Vision, 407-414.
- Van Dam, Clara, ‘Guidance documents of the European Commission: a Typology to Trace the Effects in the National Legal Order’ (2017) 10(2) Review of European Administrative Law, 75-91.
- Viscusi K., 'Individual Rationality, Hazard Warnings and the Foundations of Tort Law' (1996) 48 Rutgers Law Review. 625, at 661—

- Wilhelmsson Thomas, and Chris Willett, 'Unfair Terms and Standard Form Contracts' (2010) 1159 (202) Handbook of Research on International Consumer Law, 158.
- Willett C., 'The Directive on Unfair Terms in Consumer Contracts and its Implementation in the United Kingdom' (1997) 5(2) European Review of Private Law, 3.
- Windholz E., Consumer Protection, Modern Regulation, Paternalism, and the Nanny State: Understanding the Legitimacy Challenge' (2018) 26(2) Competition and Consumer Law Journal, 182-211.
- Wolf M, Legal Freedom to Make Decisions and Contractual Reconciliation of Interests (1970) 74.
- Xu, Hong. "Is More Information Better? An Economic Analysis of Group-Buying Platforms." (2018) 19(11) Journal of the Association for Information Systems 1.

Online Resources.

- Ajayi K. *et al*, *'The Forbidden Apple and its Impact on Man'* http://www.cbn.gov.ng/icps2013/papers/Legal%20And%20Regulatory%20Framework%20In%20E-payment%20Environment%20-%20Final%20Revised-%2011%2009%202013.pdf accessed 8 July 2023, p13.
- Alliance for Affordable Internet, 'How Africa's Largest Economy Is Prioritizing Affordable Internet. - <https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2014/04/Nigeria-Case-Study-Final.pdf> accessed 21 July 2023.
- Bloomberg, 'Nigeria Runs on Generators and Nine Hours of Power a Day' (23 September 2019) < https://www.bloomberg.com/news/articles/2019-09-23/nigeria-runs-on-generators-and-nine-hours-of-power-a-day > accessed 21 July 2023.
- Central Bank of Nigeria *Consumer Protection Regulations* (2016) <https://www.cbn.gov.ng/out/2019/ccd/cbn%20consumer%20protection%20regulations.pdf > Accessed 9 July 2023.
- Commonwealth '2002 Meeting of Commonwealth Law Ministers and Senior Officials: Kingstown, St Vincent and the Grenadines, 18–21 November 2002'

https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/view/776/776/6053 accessed 26 March 2024.

- Competition and Markets Authority *Guidance on the unfair terms provisions in the Consumer Rights Act 2015* (31 July 2015) - https://assets.publishing.service.gov.uk/media/5a7f8b58ed915d74e33f716e/Unfair_Terms_Main_Guidance.pdf (CMA Unfair Terms Guidance) accessed 22 April 2024.
- Davidson Review, Final Report (November 2006), Accessed at www.berr.gov.uk/files/file444583.pdf 26 February 2024.
- Department of Business, Energy and Industrial Strategy, 'The Statutory Report on the Implementation of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 Accessed at https://www.gov.uk/government/publications/statutory-report-on-the-implementation-of-the-consumer-contracts-regulations-2013 on 12 November 2023.
- eCommerceDB in their survey ranked Nigerian the 40th e-commerce economy in the world. See – eCommerceDB, eCommerce market in Nigeria https://ecommercedb.com/markets/ng/all Accessed 25 July 2023.
- European Commission, *Commission Notice Guidance on the Interpretation and Application of Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts* (2019/C 323/04) (27 September 2019) – < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0927(01) > accessed 19 March 2024.
- European Commission, 'Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on Consumer Rights" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(04) accessed 26 March 2024.
- European Union, 'Consumer Policy: Principles and Instruments' <https://www.europarl.europa.eu/factsheets/en/sheet/46/consumer-policy-principles-and-instruments#:~:text=Effective%20consumer%20protection%20policy%20ensures,enhanced%20protection%20for%20vulnerable%20consumers> Accessed 19 August 2023.

- GTDT, 'Complex Commercial Litigation, Nigeria' (2019) <https://gettingthedealthrough.com/area/102/jurisdiction/18/complex-commercial-litigation-nigeria/> accessed 26 July 2023.
- House of Commons Library, *Brexit: UK consumer Protection Law* (2021) https://researchbriefings.files.parliament.uk/documents/CBP-9126/CBP-9126.pdf Accessed 9 April 2024.
- Hymans Robertson, 'Over a third (39%) of consumers more likely to buy protection insurance due to pandemic' <https://www.hymans.co.uk/media-centre/press-releases/over-a-third-39-of-consumers-more-likely-to-buy-protection-insurance-due-to-pandemic> accessed 15 February 2024.
- International Monetary Fund, 'World Economic Outlook Database' (IMF.org April 2023) https://www.imf.org/en/Publications/WEO/weo-database/2023/April Accessed 25 July 2023.
- Konga <https://www.konga.com/account/login> accessed 25 December 2023 and Jumia <https://www.jumia.com.ng/customer/account/login/ > Accessed 25 December 2023.
- Lagos Court of Arbitration., 'Fees Schedule' https://www.lca.org.ng/wp-content/uploads/2018/08/Fees-Schedule.pdf Accessed 12 October 2023.
- Mondaq.com 'Effect Of Appeals On Course Of Trials – Litigation, Mediation & Arbitration – Nigeria' <https://www.mondaq.com/nigeria/trials-appeals-compensation/309008/effect-of-appeals-on-course-of-trials> accessed 4 February 2024.
- MTN Nigeria, 'MTN Data Plans' <https://www.mtnonline.com/personal/data/data-plans/> accessed 21 July 2023.
- National Bureau of Statistics, 'Poverty and Inequality in Nigeria Report' <https://nigerianstat.gov.ng/download/1092> accessed 21 July 2023.
- Nigeria Communication Commission, *Consumer Code of Practice Regulations* (2007) < https://ncc.gov.ng/docman-main/legal-regulatory/regulations/102-consumer-code-of-practice-regulations-1/file> Accessed 9 July 2023.
- Nigeria: The Rights of A Consumer Under The Federal Competition And Consumer Protection Act Of Nigeria 23 December 2019 <

https://www.mondaq.com/nigeria/dodd-frank-consumer-protection-act/877838/the-rights-of-a-consumer-under-the-federal-competition-and-consumer-protection-act-of-nigeria > Accessed 15 July 2023.

- NTTDATA 'A Quick 'Refund Guide' why Refund Takes Time to Reach Customers?' https://www.nttdatapay.com/blog/quick-refund-guide-why-refund-takes-time-to-reach-customers/ Accessed 6 May 2024.
- Organisation for Economic Co-operation and Development, *Recommendation of the Council on Consumer Protection in E-commerce*., <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0422> Accessed 12 June 2023.
- Organization for Economic Co-operation and Development (OECD) 'Understanding E-Commerce' <https://www.oecd-ilibrary.org/sites/1885800a-en/index.html?itemId=/content/component/1885800a-en#:~:text=%E2%86%90%201.,mediated%20(online%20communication)%20networks > . Accessed 1 September 2023.
- Oxford Business Group, Booming Population and E-commerce in Nigeria Spur Innovation in Retail, < https://oxfordbusinessgroup.com/reports/nigeria/2023-report/retail/on-the-up-a-booming-population-and-the-rapid-rise-of-e-commerce-creates-opportunities-for-disruption-and-innovation-overview/ > Accessed 30 July 2023.
- Power Poll < https://noi-polls.com/power-poll-result-release/ > accessed 21 July 2023.
- Principle 22, Ministerial Conference Declaration of 1997. http://europa.eu.int/ISPO/bonn/Min_declaration/i_finalen.html. Accessed 4 April 2024.
- Statista, Africa <https://www.statista.com/statistics/1120999/gdp-of-african-countries-by-country/> Accessed 20 July 2023.
- Statista, 'Mobile Internet User Penetration in Nigeria from 2016 to 2026' <https://www.statista.com/statistics/972900/internet-user-reach-nigeria/> accessed 21 July 2023.

- Statista, Retail E-commerce Sales Worldwide from 2014 to 2026, <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/> accessed 26 July 2023.
- Statista, 'Share of Households Owning a Computer in Nigeria as of 2020, by Area' <https://www.statista.com/statistics/1268977/households-with-a-computer-at-home-in-nigeria-by-area/> accessed 21 July 2023.
- The Commonwealth Model Law on Electronic Transactions (2017) https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key_reform_pdfs/P15370_8_ROL_Model_Law_Electronic_Transactions.pdf accessed 26 March 2024.
- The European Commission in Commission, *A European Consumer Agenda Boosting condence and growth* (Communication) COM (2012) 225; Organisation for Economic Co-operation and Development (OECD), *Guidelines for Consumer Protection in the Context of Electronic Commerce 1999* (France: OECD, 2000) Accessed at <https://www.oecd.org/sti/consumer/34023811.pdf> Accessed 9 July 2023.
- The Federal Competition and Consumer Protection Commission and Krispy Kreme Limited. < https://www.bbc.com/pidgin/tori-45117235> accessed 12 November 2023.
- The Information Commissioner's Office, How Should we Draft our Privacy Information? <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/the-right-to-be-informed/how-should-we-draft-our-privacy-information/> Accessed at 13 January 2024.
- The University of Law, 'More than Two Thirds of People don't Read or Understand their Contracts' < https://www.law.ac.uk/about/press-releases/more-than-two-thirds-of-people-dont-read-their-contracts/ > Accessed 26 November 2023.
- Trading Economics 'Nigeria National Minimum Wage (2020)' <https://tradingeconomics.com/nigeria/minimum-wages > accessed 21 July 2023.
- UNCITRAL Model Law on Electronic Commerce (United Nations 1996)., https://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf accessed 22 January 2024.

- United Nations Conference on Trade and Development, *E-commerce and Development Report* (UNCTAD, 2002) <https://unctad.org/system/files/official-document/ecdr2002_en.pdf> Accessed 8 July 23, p.49.
- United Nations Conference on Trade and Development, 'United Nations Guidelines for Consumer Protection' (2016 New York and Geneva) https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf Accessed 31 March 2024.
- United Nations, *Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996)* as adopted in 1998 (General Assembly Resolution 51/162 of 16 November 1996) <https://www.jus.uio.no/lm/un.electronic.commerce.model.law.1996/i_e.html> accessed 12 July 2023.
- United Nations International Telecommunication Union (ITU), *The Digital Opportunity Index (DOI)* <https://www.itu.int/ITU-D/ict/doi/material/WISR07-chapter3.pdf> accessed 20 July 2023.
- United Nations Trade and Development, World Consumer Protection Map, <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map> Accessed 9 April 2024.
- WHO Framework Convention on Tobacco Control (FCTC) of June 2004 < https://www.salute.gov.it/imgs/C_17_pagineAree_1852_listaFile_itemName_2_file.pdf> Accessed 24 January 2024.
- World Bank, 'GDP' <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> Accessed 25 July 2023.
- World Bank, Households and NPISHs Final consumption expenditure (current US$)., <https://data.worldbank.org/indicator/NE.CON.PRVT.CD?year_high_desc=true> Accessed 26 July 2023.
- World Population Review, 'Literacy Rate by Country 2024 - Nigeria' < https://worldpopulationreview.com/country-rankings/literacy-rate-by-country> Accessed 10 August 2024.

Conference Materials.

- Adelola Tiwalade, Dawson Ray, and Batmaz Firat, 'Privacy and Data Protection: The Effectiveness of a Government Regulation Approach in Developing Nations, Using Nigeria as a Case,' (The 9th International Conference for Internet and Secured Transactions (ICITST), 2014) 234–239.
- Heck P., 'How About the Abuses that have Emerged in the Instalment Transactions?' (Proceedings of the Twenty-first German Lawyers' Conference vol II 1891) 192.
- Idem Jacob, and Olarinde Elisabeta. 'Assessing the Adequacy of the Legal Framework in Facilitating E-Commerce in Nigeria.' (International Conference on Data Analytics for Business and Industry (ICDABI). Institute of Electrical and Electronics Engineers (IEEE), 2022).
- Ifijeh Goodluck, Iwu-James Juliana and Adebayo Oyeronke, 'Digital Inclusion and Sustainable Development in Nigeria: The Role of Libraries' (3rd International Conference on African Development Issues (CU-ICADI) 2016 Covenant University, Ota, Nigeria).
- Mondaq.com 'Effect of Appeals on Course Of Trials – Litigation, Mediation & Arbitration – Nigeria' <https://www.mondaq.com/nigeria/trials-appeals-compensation/309008/effect-of-appeals-on-course-of-trials> accessed 4 September 2023.
- Viswanathan, Madhu and James Harris, 'Illiteracy and Innumeracy Among Consumers: The Dark Side of Information Processing,' (The Asia Pacific Conference of the Association of Consumer Research, Gold Coast, March 2020).
- World Justice Project 2021, 'Global Scores and Rankings' < https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index/global-scores-rankings > Accessed 3 June 2022.

Theses.

- Alhusban Ahmad, 'The Importance of Consumer Protection for the Development of Electronic Commerce: the Need for Reform in Jordan' (PhD Thesis, University of Portsmouth, 2014).
- Krebs. J, 'Online Contracting and the Supply of Digital Content to Consumers' (PhD Thesis, Swansea University, 2018).

- Luth Hanneke. 'Behavioural Economics in Consumer Policy: The Economic Analysis of Standard Terms in Consumer Contracts Revisited." (PhD Thesis, Erasmus University Rotterdam, 2010).
- Tang S., 'The Statutory Right of Withdrawal in E-Commerce: Comparative Study Of European Law and Swiss Law' (Doctoral dissertation, Université de Neuchâtel, 2015).
- Tom Alexander and Jasper Andreas., 'E-Commerce in Nigeria: A Qualitative Study on Challenges in the Nigerian E-Commerce Landscape and Solution Approaches' (Thesis, Jönköping University, Jönköping International Business School, 2022).

Newspaper.

- Independent Newspaper, 'Naspers Pulling from Nigeria' <https://independent.ng/naspers-pulling-nigeria/> accessed 20 July 2023.
- Techpoint Africa, 'Confirmed: OLX Shuts Down Office in Nigeria' < https://techpoint.africa/2018/02/06/naspers-shuts-down-olx-ghana-nigeria-kenya/ > Accessed 13 August 2023.
- Techpoint Africa, 'There's a Growing Trend of Foreign Investors Leaving the Nigerian Startup Scene' - < https://techpoint.africa/2018/04/16/foreign-investors-leaving/ > Accessed 17 February 2024

ANNEX - UPR16 ETHICS FORM.

FORM UPR16

Research Ethics Review Checklist

Please include this completed form as an appendix to your thesis (see the Research Degrees Operational Handbook for more information

UNIVERSITY OF PORTSMOUTH

Postgraduate Research Student (PGRS) Information				**Student ID:**	UP908466
PGRS Name:	Ifedayo Adekeye				
Department:	Faculty of Business and Law	**First Supervisor:**	Prof Munir Maniruzzaman		
Start Date: (or progression date for Prof Doc students)	**1 February 2019**				
Study Mode and Route:	Part-time ☐	MPhil ☐	MD ☐		
	Full-time ☒	PhD ☒	Professional Doctorate ☐		

Title of Thesis:	EXAMINING THE EFFECTIVENESS OF THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT OF 2018 IN PROTECTING ELECTRONIC CONSUMERS IN NIGERIA.
Thesis Word Count: (excluding ancillary data)	79,998

If you are unsure about any of the following, please contact the local representative on your Faculty Ethics Committee for advice. Please note that it is your responsibility to follow the University's Ethics Policy and any relevant University, academic or professional guidelines in the conduct of your study

Although the Ethics Committee may have given your study a favourable opinion, the final responsibility for the ethical conduct of this work lies with the researcher(s).

UKRIO Finished Research Checklist:
(If you would like to know more about the checklist, please see your Faculty or Departmental Ethics Committee rep or see the online ve
the full checklist at: https://ukrio.org/publications/code-of-practice-for-research

a) Have all of your research and findings been reported accurately, honestly and within a reasonable time frame?	YES ☒ NO ☐
b) Have all contributions to knowledge been acknowledged?	YES ☒ NO ☐
c) Have you complied with all agreements relating to intellectual property, publication and authorship?	YES ☒ NO ☐
d) Has your research data been retained in a secure and accessible form and will it remain so for the required duration?	YES ☒ NO ☐
e) Does your research comply with all legal, ethical, and contractual requirements?	YES ☒ NO ☐

Candidate Statement:

I have considered the ethical dimensions of the above named research project, and have successfully obtained the necessary ethical approval(s)

Ethical review number(s) from Faculty Ethics Committee (or from NRES/SCREC):	

If you have *not* submitted your work for ethical review, and/or you have answered 'No' to one or more of questions a) to e), please explain below why this is so:

There is no ethics review needed for this research.

Signed *(PGRS)*:		**Date:** 28 May 2024